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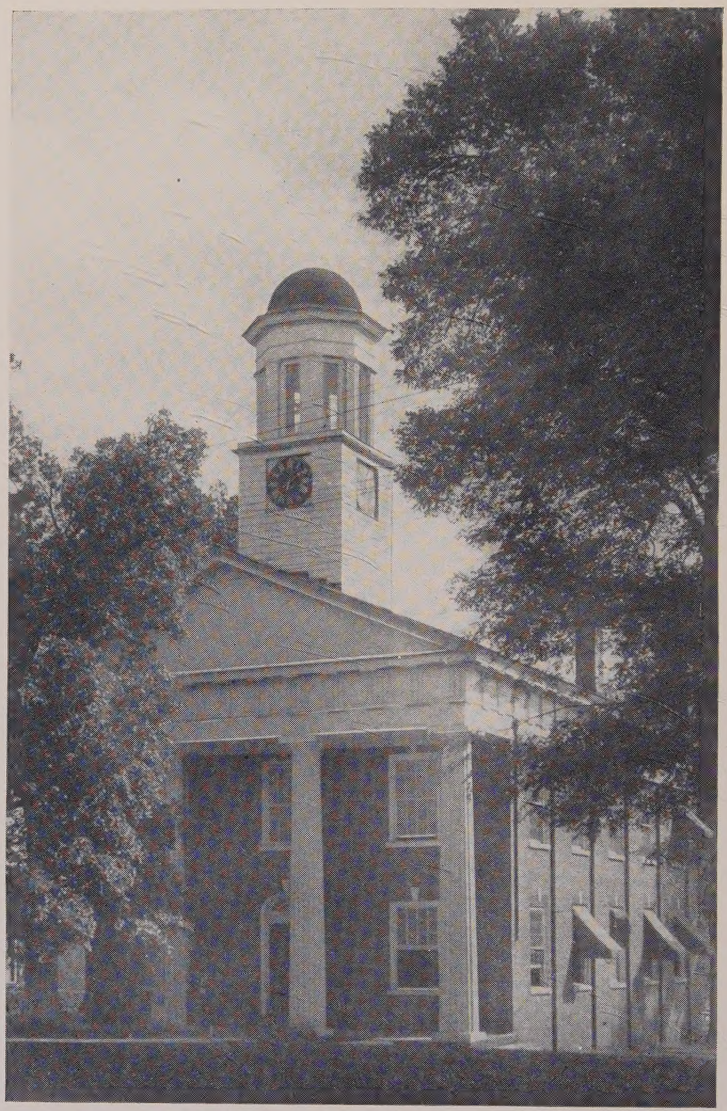

ORANGE COUNTY COURTHOUSE

COUNTY GOVERNMENT AND ADMINISTRATION IN NORTH CAROLINA

BY

PAUL WOODFORD WAGER, PH.D.

Sometime Research Assistant in the Institute for Research in Social Science in the University of North Carolina.
Assistant Professor of Rural Social-Economics, University of North Carolina

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PREFACE

SINCE 1914 Professor E. C. Branson of the Department of Rural Social Economics at the University of North Carolina has been calling attention to county government and its antiquated and wasteful practices. He has continued year after year to make investigations, to assemble every scrap of evidence that got into print, and to write and speak unceasingly on the need for improved county government. His work was greatly augmented in 1924 when the Institute for Research in Social Science was founded and immediately adopted county government and county affairs as one of its chief problems, to be directed by Professor Branson. In the three years that have elapsed since the work was begun field investigators have made intensive courthouse studies in 43 of the 100 counties of the state.

Since it is not expedient or practicable to publish the forty-three reports touching individual counties, it has seemed desirable to prepare a general work describing the development, present organization and practice, and the outstanding needs of North Carolina county government. It is important to acquaint the public with the conditions which prevail in county administration, explain the cause and purpose of the recent legislation, and suggest further improvements that might be made in the interest of economy and good government. Such is the purpose of the present volume.

The book is mainly descriptive but contains sufficient illustration and suggestion, it is hoped, to give it a dynamic quality. It attempts to describe faithfully and frankly the prevailing practices in North Carolina county government, whether those practices be good or bad. Most of the illustrations represent personal observations of the writer or his colleagues, based upon field visits to North Carolina counties. Most of the changes suggested are features of organization or administration which have appeared successful in other states or in particular counties in this state.

A chapter of forty pages on the origin and development of the county has been omitted for lack of space. For the

same reason the recapitulation at the end of the last chapter has been reduced to the minimum. Such suggestions and recommendations as the author has to offer are presented in connection with the particular topic under discussion and are not collected again in a single chapter.

The book is presented in a simple style and with few abstract discussions, for the rank and file of the citizens and taxpayers of the state. Indeed, it was in their interest that the research in county government was undertaken, and it is to them that this book is addressed. While many phases of administration are presented, the author does not pretend that each is analyzed exhaustively or with finality. Many topics deserve much fuller treatment than the compass of the book will permit. The volume is not designed as a text-book, but it is hoped that it will be of value to the teachers of civics and government in our public schools.

I am especially indebted to Professor E. C. Branson and to Professor A. C. McIntosh of the Law School for their continued direction and valuable aid in the preparation of the manuscript. I am grateful to Professors R. D. W. Connor, E. W. Knight, Roy M. Brown, and N. W. Walker for reading and criticizing selected chapters, and to Dr. L. R. Wilson for reading and annotating the entire manuscript. Special thanks are due Miss Katherine Jocher, Assistant Director of the Institute for Research in Social Science, and Miss Ina V. Young for assistance in preparation and typing of the manuscript, and to Miss Henrietta R. Smedes for her generous help with the proofreading. I wish to acknowledge materials and suggestions from my research colleagues—Messrs. Brandon Trussell, Myron Green, and Charles W. Edwards. I am indebted to Dr. E. C. Brooks and the members of the State Commission on County Government for a generous invitation to attend their meetings and participate in their councils. Finally, I wish to acknowledge and thank the county officials in those counties which I visited for the unfailing courtesy and coöperation that I received from them. Without the help and confidence of these men and women the writing of this book would have been impossible.

CHAPEL HILL
January, 1928

PAUL W. WAGER

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COUNTY GOVERNMENT AND ADMINISTRATION IN NORTH CAROLINA

Chapter I

HISTORY OF THE NORTH CAROLINA COUNTY

COLONIAL PERIOD

Under the Proprietors, 1663-1730:

While permanent settlements were made in the region which is now North Carolina not much later than 1650, the political history begins with the charter of Charles II in 1663, by which he granted to eight Lords Proprietors the province of Carolina. The grant extended from Virginia on the north to the Spanish possessions on the south and indefinitely to the west. Out of this territory it was proposed to create eight "counties palatine,"[1] each one of which was to be directly dependent upon one of the proprietors. The eight proprietors were the Earl of Clarendon, the Duke of Albemarle, Lord Craven, Lord Berkeley, Lord Ashley, Sir George Carteret, Sir William Berkeley, and Sir John Colleton. It was further intended that these eight local governments should be consolidated into an imperial government, but for various reasons, chiefly the uneven development of the province, the plan was never consummated. In fact, only three "counties palatine" were established, and of these one was short-lived and another was outside the present boundaries of North Carolina.

In 1663 the county of Albemarle, comprising the region around Albemarle Sound, was formed. The next year a settlement was made on the Cape Fear, and the region lying south of the mouth of that river was organized into the county of Clarendon. The colony did not thrive and was abandoned in 1690. The third county, Craven, comprised the region immediately south of Cape Romaine, and thus

[1] This term is used to distinguish the early divisions of the province, which disappeared, from the still smaller divisions which were termed precincts, and which survived as counties. The eight Lords Proprietors were granted the province of Carolina, with such full powers of government as appertained to the county palatine of Durham in England. The county palatine of Durham was so called because the bishop of Durham had in his county as full powers of government as the king had in his palace.

became a part of the South Carolina province. Albemarle was therefore the first successful municipal corporation in North Carolina and the parent of all that followed. For a time it constituted the province of North Carolina, the two terms being used interchangeably. In 1696 Albemarle was divided, the southern part becoming the county of Bath, and it might not be improper to consider Bath an additional "county palatine."

The highest civil authority in the county, or province, was the governor, appointed by the Lords Proprietors. He was assisted and checked somewhat by a council,[2] and by the freemen of the colony or their deputies. The first assembly was in 1665, and the entire body of citizens met and voted directly. In 1667 they elected twelve deputies to represent them, and these, with the governor and council, constituted the assembly, called the "Grand Assembly." From 1693 to 1712 the proprietors commissioned only one governor to look after both colonies, and he resided at Charleston. The northern part of the province was governed by a deputy or by the president of the council. The absence of a resident governor in North Carolina tended to increase the influence of the Assembly at the expense of the proprietors. Consequently, after 1712, a governor was again sent to each colony.[3]

In 1669 the proprietors adopted the Fundamental Constitutions prepared by the philosopher John Locke, a very elaborate and feudalistic system of government which was not at all suitable to America, and most of the features of which were soon abandoned. The whole province was to be divided into counties, each county into eight seigniories, eight baronies, and twenty-four colonies, the latter to be grouped into four *precincts*. In every county there was to

[2] In regard to membership, the history of the council in Proprietary North Carolina divides itself into four periods. In the first there were six, eight, ten, or twelve members who were selected by the governor. This period ended with the temporary constitution of 1670, when the council was made to consist of the five deputies who represented the colonial nobility, and five additional members elected by the Assembly. The latter represented the people. The third period began in 1691, when the council was composed entirely of the deputies. Finally a last change was made in 1724, when the deputies were abolished and the membership was fixed at twelve, or less, all of whom were appointed by the proprietors.—John Spencer Bassett, *Constitutional Beginnings in North Carolina*, p. 50.

[3] Hawks, *History of North Carolina*, p. 493.

be a court held by the sheriff and one justice of the peace from each precinct; and in each precinct there was to be a court composed of a steward and four justices.

It is generally supposed that the fundamental Constitutions were never carried out, and in most respects they were not, but it now appears that the precinct court, as first established, was a faithful attempt to carry out the instructions of the Fundamental Constitutions.[4] Soon after 1690, however, the proprietors began to realize that a ready-made plan could not be imposed upon a frontier community, and thereafter allowed the colonists to shape their institutions pretty much as they saw fit. A striking example of the freedom allowed the colonies is found by contrasting a commission issued to the justices of Perquimans in 1703 with a commission issued by Governor Ludwell in 1690. In the later commission the title of steward is dropped; there are six justices instead of five as provided in the Fundamental Constitutions; the courts are required to meet seven times a year instead of four; and the jurisdiction of the court is more restricted.[5]

The Fundamental Constitutions, nevertheless, provided the foundations for what was later to become the precinct and the county court. The justices of the peace were appointed by the governor for each precinct, and these, acting singly, had a limited jurisdiction; while collectively, they constituted the precinct court. There were usually six or eight justices in a precinct, though a smaller number could hold court. The sessions were held quarterly, and the court possessed a limited criminal and civil jurisdiction; it could take probate of wills, and appoint guardians for orphans or bind them as apprentices.[6] It might also appoint

[4] Article 63 of the Fundamental Constitutions provides: In every precinct there shall be a court consisting of a steward and four justices of the precinct, being inhabitants, and having three hundred acres of freehold within the said precinct, who shall judge all criminal crimes, except for treason, murder, or any other offenses punishable with death, and except all criminal causes of the nobility; and shall judge also all civil causes whatsoever; and in all personal actions not exceeding fifty pounds sterling without appeal; but where the cause shall exceed that value, or concern a title of land, and in all criminal causes; then either party upon paying five pounds sterling to the Lords Proprietors' use shall have liberty of appeal to the county court.—*Colonial Records*, I, 187-206.

[5] Boyd, *The County Court in Colonial North Carolina.*

[6] McIntosh, "The County Government System in North Carolina," *North Carolina Club Yearbook*, 1917-18, p. 19.

administrators, but all letters testamentary or letters of administration were signed by the governor and secretary of the province, with the colony seal annexed. In the early period the processes of the court were served by a "provost marshal," but subsequently the title of the office was changed to sheriff. Every court had its clerk and could appoint constables and highway overseers. The earliest records of a precinct court which have been preserved in North Carolina are those of Perquimans Precinct in 1688.[7] For many years there were no courthouses, and the courts were held at private homes, sometimes at the home of a litigant. In 1722 an act was passed to settle the precinct courts at definite places, and the justices of each precinct were authorized to buy an acre of land and build a courthouse.[8]

The precinct was also recognized as the political unit, each being entitled to representation in the Assembly. In fact, the precinct is the only feature of the Grand Model, if we exclude the court system, which ever gained any practical significance. The county of Albemarle was originally divided into four precincts—Currituck, Perquimans, Pasquotank, and Chowan. Bath County also had four precincts—Beaufort, Hyde, Craven, and Carteret; and what was Clarendon County had one, New Hanover. Later subdivisions created Bertie, Tyrrell, and Edgecombe from Albemarle, and Bladen and Onslow from Bath. While the precinct was nominally a division of a county, it was in effect the more active unit of government and the forerunner of the modern county. In 1739, nine years after the extinction of the proprietary government, the fourteen precincts then existing were styled "counties," for that is what they had really been all the while, and the larger divisions were abolished.

In 1701 an attempt was made to establish the Church of England in the colony, and each precinct was constituted a parish. This attempt failed for a while, but the parish was recognized, and in 1715 the establishment was reënacted, and several precincts were divided into two parishes. The vestry managed the affairs of the parish, appointed collectors, kept the church in repair, prepared standards of

[7] Boyd, *op. cit.*

[8] McIntosh, *op. cit.*, p. 20.

weights and measures, and looked after the sick and the poor.[9]

Under the Royal Governors, 1730-1776:

In 1728 the Lords Proprietors sold their interests to the king and a royal government was established,[10] but no change was made in the administration of local government. The precinct courts retained the general management of local affairs. By the act of 1738 (Old Style, or 1739, New Style) the precincts became counties; the precinct court became a county court; and the ministerial officer of the court was henceforth called sheriff instead of provost marshal. During the next few years the counties underwent many divisions and alterations; others were created from them, "and the boundaries were settled and altered from time to time as were most suitable to the circumstances of the inhabitants."

By an act of 1746 both the county court and the superior court were reorganized. It was enacted that the county court should meet four times a year and should have the same powers and authority as such courts in England, and by an act of 1767 they were termed Courts of Pleas and Quarter Sessions. The justices continued to be appointed by the governor with the approbation of the council. This method of appointment was only nominal, however. As a matter of practice the appointments were usually made on another's recommendation. Sometimes the recommendations were made by members of the assembly, sometimes by prominent citizens, sometimes by members of the council, sometimes by members of the county court itself. Whatever the source of the recommendation, it amounted to the same thing, for the county court was made up exclusively of prominent merchants, planters, and slaveholders, and the justices, in turn, dominated the assembly. The county court was virtually a closed corporation. The number of justices of the peace was not limited as in the earlier period, the appointment being given to all members of the "courthouse ring."[11]

[9] *Ibid.*, p. 20.
[10] It was not until 1730 that the royal government was set up.
[11] Boyd, *op. cit.*, p. 19.

The County Court of Pleas and Quarter Sessions was a court of law and equity, with original and appellate jurisdiction. Both its original and appellate jurisdiction varied from time to time, and at most times during the royal period the courts were uncertain as to the jurisdiction which they possessed, so chaotic and changeable was the law.

By the act of 1746 the justices of the peace, in their quarterly sessions, had the power of hearing and deciding all matters in law wherein the amount in litigation was above forty shillings and not more than twenty pounds, acts of "trespass and ejectment and writs of formedon being excepted." Their criminal jurisdiction extended to petty larcenies, assaults, batteries, breaches of the peace, and other misdemeanors. They also heard all cases of legacy, intestate estates, and cases involving orphans. There was a provision made for appeals from this court to the superior court. The prosecuting officer in the county court was a deputy of the attorney-general of the colony, the deputy for each county receiving his appointment from the attorney-general.[12]

An act of the Assembly in 1754 somewhat enlarged the jurisdiction of the county court, but the act was repealed by the Crown. The local court was almost entirely under the control of the provincial officers, and to extend its jurisdiction meant further limitation of the superior courts, which were more directly under the Crown. The conflict between the governor, representing the king, and the Assembly, made up largely of the justices of the peace, was constant and bitter. Nominally, the governor was empowered to control the county courts in at least five significant ways, but actually he did not always dare to exercise his full prerogative. He had (1) a full and plenary pardoning power, with the exceptions of treason and murder, for which reprieves might be granted awaiting royal pleasure; (2) the power to establish courts; (3) the power to supervise the administration of justice and see that the law was administered without delay or partiality; (4) the power to appoint justices of the peace by and with the consent of the council; (mention has already been made of the manner in which

[12] Guess, *County Government in Colonial North Carolina*, p. 26.

this power was circumscribed); (5) the power to remove justices. The governor exercised this power sparingly also, for the reason that the justices were so powerful in the Assembly that a removal was almost certain to be attended with "very bad results."[13]

Undaunted by the repeal of the act of 1754, the legislature passed another act extending the jurisdiction of the inferior courts to cases involving fifty pounds. This act was likewise repealed, but not until after it had been in operation a short time. In 1762 the Assembly relinquished its demands and limited the jurisdiction to twenty pounds, and no further effort was made to extend it until 1773. Once more the Assembly won out over the governor, but as usual the act was repealed by the Crown.[14]

Below the County Court of Quarter Sessions was the court of one or two magistrates, the lowest court of the judicial department. This court, transplanted from England, continued through the proprietary and the royal periods with practically the same jurisdiction as was granted it by the patentees. It tried petty causes, both civil and criminal, and had much to do with preserving peace and administering justice in an elementary way.

The County Court:

During the colonial period a justice of the peace occupied a position of influence and dignity. It must be remembered not only that the colonial justices were important local magistrates but that, when acting together, they constituted the county court with both judicial and administrative duties. A justice had the power and the prestige of a county commissioner and a county judge combined. At least that could be said of the chairman, chosen usually on the basis of seniority.

When sitting as a county court the justices not only exercised judicial functions, but performed the services now performed by the board of county commissioners, and, in addition, certain duties which grew out of the conditions of the time. Among the powers and duties of the county court was the following: It was authorized to levy and assess

[13] Boyd, *op. cit.*, p. 7. [14] Guess, *op. cit.*, p. 27.

annually between the first of May and the first of November such tax on the taxable persons of the county as should be sufficient to defray the "contingent charges" of the county. It is to be noted that the tax was assessed on polls and not on property. A law of 1715 defines taxable persons as all males (not slaves) above sixteen years of age and all slaves, male and female, above twelve years of age. It is to be noted, too, that there was no limitation on the amount of taxes that might be levied, and no statute which defined the term "contingent charges." Of course, as a matter of record, we know that the services of government were very limited and the volume of taxes comparatively small. Other administrative powers included the laying out and construction of roads and bridges, and the operation or control of ferries; the construction of public buildings, mainly jails and courthouses; the licensing of ordinaries (eating houses) and fixing the rates on the foods and beverages to be served; the determining of the location of mills; the regulation of weights and measures; the protection of slaves and indentured servants; the granting of letters of administration; the oversight of orphans and orphans' estates; the proving of headrights; the granting of marriage licenses; the processioning of land (it was the custom to establish the ownership and mark the boundaries of each tract of land every three years); the recording of deeds, mortgages, and other instruments; the establishing and providing for the protection of munition magazines; the determining of the boundaries of governmental areas; the acting as trustee of public endowments; and various other minor powers. The county court also enjoyed large powers of appointment. It appointed the sheriff, the constables, the overseers of the roads, searchers, patrolmen, and inspectors, and sometimes town commissioners. In fact, the court appointed all the important local officers except the clerk of court and the register of deeds.

Since the county court was the main organ of county administration during the colonial period, the most important officials of the county were the court officials, especially the sheriff and the clerk.

The Sheriff:

It was not until 1738 that the office of sheriff was created in the colony. Prior to that time the duties which the sheriff came to exercise were vested in the provost marshal of the colony and his deputies, usually one in each precinct. The provost marshal was appointed by the king, and the deputies bought their appointments from the provost marshal.

In 1738 there was a change not only in the name of the office but also in the manner of appointment. The sheriff thereafter was nominally appointed by the governor, but actually the appointment was in the hands of the county court—an evidence of its increasing power. The act of 1738 provided that in every precinct in the province the precinct court (thereafter called county court) should recommend three persons "as they shall think most fit and able" to the governor, from which names he was to appoint a sheriff to serve two years. A further significant safeguard was that the justices of the peace could not nominate a person to be sheriff who was not at the time of appointment a justice of the peace.

The act required that the sheriff, or his deputy, should execute all writs directed to him by the county court and return them within five days before the time mentioned therein for return. He could not serve a writ on Sunday nor make a legal return of a writ directed to him, unless he had actually been at the dwelling of the person attached and left a copy of the writ. He was required to be in constant attendance at the county court when it was in session, and to attend, in turn with other sheriffs, the sessions of the general court. It was his duty to arrest any person who was a disturber of the peace or suspected of treason. He had custody of the county jail, imprisoned criminals, inflicted corporal punishment, and attended executions. He held the elections for burgesses and summoned juries for the inferior and general courts. He was also the collector of public duties (taxes) both for the county and the parish, a service for which he was allowed a commission at one time of 8 per cent.

No other single officer in the county exercised such plenary executive and administrative powers as did the colonial

sheriff. Nor did any other officer make for misrule and retard colonial government quite so much as the sheriff. With its enormous powers and handsome fees the sheriff's office became the prize bit of patronage at the disposal of the county court.[15] The sheriff's political influence was so great and his control over the conduct of elections so complete, that he was frequently able to return to the Assembly the person of his choice rather than that of the electorate. He was also very lax in the collection of taxes, irregular in his settlements with the treasurer, and quite often guilty of embezzlement. That the fiscal powers of the sheriff were very much abused, is evidenced by the numerous acts passed to curb these excesses.

In 1759 an act[16] stated that "the continuing of sheriffs long in office, who do not regularly account for the Public Taxes they collect, is of great detriment to the Province." To remedy this evil, it was provided that the county court should recommend to the governor no person who should have served two years successively, unless that person could produce a certificate from the treasurer of his district saying that he had fully accounted for and paid in to him all public taxes he had received as sheriff. If the county court did nominate such a person, the governor was empowered to appoint someone else to the office.

In 1766 another act[17] declared: "Many of the sheriffs of the province have heretofore applied to their own private uses, or otherwise embezzled, considerable Sums of Public Money, in the hope of replacing the same when called for." The same year another act[18] was passed providing for an extension of the time for the sheriff to settle his accounts with the justices of the county court. The act stated that because of the shortness of time allowed the sheriff to settle with the county courts, and because of the scarcity of currency in the province, it would be lawful for the sheriffs to settle with the county courts at any time between October 1 and April 10 of each year.

[15] Boyd, *op. cit.*, p. 110.
[16] *Laws of 1759*, chap. V: see *State Records of North Carolina*, XXIII, 505.
[17] *Laws of 1766*, chap. VI: see *State Records of North Carolina*, XXIII, 722.
[18] *Ibid.*, p. 767.

How surprisingly like the present situation! How little advance the counties have made in tax collecting! The same evils exist today, and the same futile remedies are proposed. After nearly two hundred years' experience with the sheriff as tax collector, always with the same results—dilatoriness, delinquency, defalcation—the counties seem unable to learn the lesson. Other states seem to be able to get taxes collected with promptness and economy, but North Carolina persists in retaining a system that has been bad from the very beginning.

Clerk of the Court:

There was in each county a clerk of the court who kept the court records and perhaps performed other clerical duties. Up to 1762 the appointment of this official seems to have been in the hands of the Secretary of the Crown. In 1740 an act was passed by the colonial Assembly which sought to give the county courts control of the appointment, but the act was repealed by the King in Council. In 1762 an act was passed which vested the appointment of the clerks of the county court in a provincial officer known as the clerk of the pleas. He farmed out the offices to the highest bidders. Sometimes one person would be given several commissions, and he, in turn, would farm out the offices to the individuals who did the work. The clerks, in order to reimburse themselves for the price of their commissions, yielded to the temptation to charge excessive and illegal fees.

The position was not only lucrative but of considerable political influence. There was a constant struggle between the court party (local politicians) and the governor to get control of the appointing power of this office, but neither was successful, the appointment remaining throughout the colonial period in the hands of the clerk of the pleas.

Register of Deeds:

The office of register came into existence at a very early date "to keep exact enteryes in faire bookes of all publicke affaires of the said countyes." A law of 1715 provided that the register should be appointed by the governor from three

freeholders who should previously have been selected by the voters in the precinct. Later he was appointed by the governor without previous nomination. The duties of the register were to reg ster deeds and, until the appointment of parish clerks, to record births, marriages, and deaths.

Other Officers:

No record of treasurers has been found prior to 1746. Their duties were similar to those of the county treasurer today except that then they accounted to the Assembly.

The Concessions of 1665 provided for coroners to be appointed by the governor and the council. This method of appointment seems to have been continued throughout the colonial period. The office was probably of somewhat greater importance then than now.

The constable was a rather important officer in colonial days, for he was the ministerial officer of the justice's court, which was of somewhat greater dignity and importance than it now is. The constable was also the neighborhood police officer.

Evils in the Colonial Government:

The control of county government throughout the colonial period was vested almost solely in the county court which, prior to 1738, was called the precinct court. The court was composed of all the justices of the peace in the county, though a smaller number might conduct business. The court met regularly four times a year and exercised both judicial and administrative powers. The sheriff executed its commands, usually through his deputies, of which there was a liberal supply. The sheriff and nearly all of the other county officers were appointed by the court. The members of the court, while nominally appointed by the governor, were virtually self-appointed.

The county court system grew up in North Carolina because it suited the conditions and demands of colonial society. Although there were many small farmers without slaves in colonial North Carolina, they were not in control of the government. The county government was in the hands of the merchants and planters. The county court

was not a democratic institution; it was the organ of the dominant class. The members of this class controlled the colonial assembly also. They ran the government, partly because they found it an interesting diversion, but more particularly because they were in the habit of exercising authority on their own plantations and naturally developed a fondness for power as well as a genuine capacity for government. Not unmindful of their privileged position, they quite openly and unblushingly manipulated elections and fashioned legislation to prevent democratic tendencies and insure the stability of their order. It must be conceded that the system was not democratic, but it does not follow that it was not effective. The county court system, with all governing authority concentrated in one body and that body a hand-picked one, at least offered a plan of government that was simple, direct, and workable under pioneer conditions. It might even be argued that it was not undemocratic. In the first place, it was a plan of local origin and not a scheme foisted upon the colonies by visionaries abroad. If it had its origin in the Fundamental Constitutions, its development had never been restricted by that document. In the second place, the justices of the peace, acting through the Assembly, waged relentless warfare against the colonial governor and the extension of his powers. The justices were champions of democracy, but it was democracy of a very restricted sort.

Boyd, in commenting on the county court system, says:

> The weakness of the system from the viewpoint of the administration of the Colony by England lay in the fact that local government was too well under the control of local forces. From the viewpoint of the Crown, this made for decentralization and ineffectiveness; from the viewpoint of the colonist, it made for greater effectiveness and greater solidification of the court party which controlled all popular branches of the government of the Colony. . . .[19]

There were many abuses in the county court system due in part to the fact that, generally speaking, one dominant class controlled the courts. Sometimes the justices were partial to the creditor class. There were also abuses in the system of fees, in

[19] Boyd, *op. cit.*, p. 19.

the taxing power, in the process of serving executions, and in the jury system. The fact that the nomination of jurors to the superior and general courts was in the hands of the county courts had the effect of further solidifying the position of the court party.[20]

We thus see that whatever merit the county court system of the colonial period possessed, it was also characterized by very serious evils. No doubt there were many honorable squires who served their fellow citizens with modesty, faithfulness, and unswerving integrity, but there were also some rogues. Perhaps the system was one which encouraged extortion and general rascality.

We have already mentioned the vicious method by which the clerks of court secured their offices. At that time, however, "farming out offices" was a common practice and not considered dishonorable. Before the end of the colonial period the clerk of the pleas was enjoying a real "sinecure." There were then thirty-four counties and the rentals paid him by the clerks of the county courts yielded him as much as five hundred and sixty pounds a year.[21] The system was bad, too, in that the clerks were relieved of any responsibility to the people and could demand extortionate fees. They got themselves elected to the Assembly and thus prevented the overthrow of the system. The registers were equally guilty of extortion.

The sheriffs were especially corrupt. In 1767 Governor Tryon declared it as his opinion that "the sheriffs have embezzled more than one-half of the public money ordered to be raised and collected by them."[22] By 1770 the sheriffs in the several counties had defaulted to the amount of sixty-four thousand pounds. That year there were defalcations on the part of the sheriff or one of his deputies in every county. The sheriff was guilty not only of embezzlement but, if we are to believe the accounts of the time, of other unfair practices. It is said that he would often arrive at the home of a taxpayer unexpectedly and thus find the man without the ready cash. While he was going to the neighborhood money lender to get it, the sheriff would seize a

[20] *Ibid.*, p. 51.
[21] *North Carolina Colonial Records*, IX, 264-266.
[22] Guess, *op. cit.*, p. 34.

horse or other property and depart. By the time the man arrived in town with the money, the sheriff would have sold the attached property to a friend, with whom he was in league, at much less than its true value. This allegation is in such striking contrast to the present practice that the writer is inclined to doubt the charge.

The greatest evil was, perhaps, extortionate fees. Nearly all the officers were paid in fees. "As soon as counties were organized on the frontier, clerks, registers, and lawyers swooped down upon the defenseless inhabitants like wolves."[23] Even when fees were fixed by law, officers would resolve a service into two or more services and demand a fee for each. Lawyers and court officials were thought to be in collusion to postpone cases in order that they might get more fees. The court business was sadly behind, much to the inconvenience of the people, who were often obliged to travel thirty to sixty miles to attend court.

"It was a harvest time in general for county officials. Malfeasance in office was the rule rather than the exception. Corruption stalked abroad throughout the land, unconcealed, unawed, and unabashed."[24]

The first formal complaint was made in June, 1765, in the famous Nutbush Paper of Granville County. This paper set forth the grievances under which the people professed to labor. It complained of illegal exactions of lawyers and clerks, and declared that "few of you have not felt the weight of these iron fists."[25] Fuller complaints were made in Orange and Anson counties the following year. Protests were sent to the Assembly, but there was no redress of grievances. Angered and exasperated, the colonists were in a mood for resistance by force, and in 1767 the War of the Regulators began, a preliminary struggle between the Tories and the Patriots culminating in 1771 in the Battle of Alamance.

As a result of the revolt attorneys' fees were more carefully regulated; sheriffs were restricted in the manner of collecting taxes; inferior courts were authorized to establish tobacco warehouses wherever needed; county officers of

[23] Bassett, *The Regulators of North Carolina*, p. 153.
[24] Quoted in Guess, *op. cit.*, p. 35.
[25] *Ibid.*, p. 35.

importance were placed under bond; and provision was made for a quicker and cheaper method of collecting small debts. These improvements came during the last years of colonial government.

PERIOD OF STATEHOOD

County Government from 1776 to 1868:

The shifting of authority from "the King" to "the people" hardly made a ripple in the conduct of local government. The Court of Pleas and Quarter Sessions remained the dominant institution in the county. All went on as before except that the sheriff opened court in the name of the State instead of in the name of the King, and criminal cases were docketed "The State vs. John Doe" instead of "The King vs. John Doe."

The Halifax constitution of 1776 did not provide for any particular form of county government, with the result that the existing system was continued. The county court retained its control over the administration of the affairs of the county. The court was composed of all the justices of the county, but any three justices could hold the court. A common practice was for a majority of the justices to meet at the beginning of the year, appoint a chairman, and designate five of their number to hold the court for the year. The justices were commissioned by the governor on the recommendation of the General Assembly to hold office during good behavior. They might be removed by the General Assembly for misbehavior, absence, or inability. The office was one of influence and esteem and often attracted the ablest men in the county. Professor McIntosh relates that "when Chief Justice Ruffin, perhaps the greatest judge the State has produced, retired from the Supreme Court Bench, he was appointed a justice of the peace in Alamance County in order that he might preside over the county court, and thus give the county business the advantage of his knowledge and experience."[26]

The constitution provided that there should be in each county a sheriff, coroner or coroners, and constables, but it did not specify how they should be chosen. At first they

[26] McIntosh, *op. cit.*, p. 21.

were appointed by the county court, but later the sheriffs were elected by the voters of the county and the constables by the voters in a smaller division known as a captain's district,[27] a minor division for military purposes.

The court appointed a clerk, a register, a county attorney, a county trustee (equivalent to treasurer), inspectors of tobacco and other products, rangers for estrays, entry-taker and surveyor, overseers of the roads, standard-keeper, and seven freeholders as overseers of the poor. The oversight of the poor was for a long time left to the churchwardens as officers of the parish. Later the county overseers were called wardens of the poor. It is interesting to note how few officers were elected by the people. Not even the justices who made the appointments were popularly elected.

The county court had both judicial and administrative powers. Its judicial power extended to all civil cases at common law, where original jurisdiction was not given to a single justice or to the higher courts; its criminal jurisdiction included all petit larcenies, assaults and batteries, trespasses and breaches of the peace, and all other crimes and misdemeanors, the punishment of which did not extend to life, limb, or member. It also had jurisdiction in applications for dower and in partition proceedings, in the probate of deeds and wills, in the appointment of administrators, executors, and guardians, and in the settlements of such officers. Its non-judicial duties included the assessment and levying of taxes; the establishment and care of roads, bridges, and ferries; the granting of licenses and the control of taverns by fixing the prices of foods and drinks served; and the control of the erection of public mills. The sheriff collected the taxes, paid over the funds to the county trustee, and both accounted for the same to the county court.

Although the constitution of 1776 required that schools be established by the General Assembly "for the convenient instruction of youth," very little progress in education was

[27] Whenever it was deemed necessary, the court appointed a patrol committee of three in each captain's district. Among other duties the patrolmen were to visit the Negro houses in their respective districts, as often as was deemed necessary, and inflict a punishment, not exceeding fifteen lashes, on all slaves found off their owner's plantation without a proper permit.

made for many years. In fact, the first public school law was passed in 1839. It provided that the county court should elect from five to ten persons to compose a county board of superintendents. This board divided the county into school districts, which were approximately six miles square. For each district the board named a committee of local citizens to assist the county board in erecting a schoolhouse and in establishing a school. The first schools received two dollars from the State Literary Fund, which had been established in 1825, for each dollar raised by local taxation. After 1839 public schools developed rapidly, and before the outbreak of the Civil War the state had a very creditable school system. This development will be discussed in the chapter on public education.

Throughout the ante-bellum period the county remained the primary unit of local government. The township did not exist. There were voting precincts, military districts, and, after 1839, school districts, but none of these had much governmental significance. Civil authority was centered in the county court composed of the justices of the peace, and they, in turn, were creatures of the state government. Except for minor changes from time to time the same system remained in operation for two hundred years. Not until 1868, or during the carpet-bag regime, was this long-established system overturned and a new and more democratic scheme of local government substituted.

The Reconstruction Period, 1868 to 1876:

The new plan of local government set up by the constitution of 1868 was borrowed from Pennsylvania. It is known as the Township and County Commissioner Plan. It provided for a board of five county commissioners to be elected at large by the voters of the county. To this body was delegated all the administrative powers and duties which had belonged to the county court. That is, the commissioners were given control over the public buildings, schools, roads, bridges, taxes, and finances of the county. The voters of the county were also to elect the following officers: treasurer, surveyor, register of deeds, clerk of superior court, sheriff, and coroner. All the county officials except the clerk of

superior court were elected for a term of two years. The clerk's term was made four years. The register of deeds was to be *ex officio* clerk to the board of commissioners. The clerk of superior court was to keep the court records, take the probate of wills and deeds, appoint executors, administrators, and guardians, and control their settlements, bind apprentices, and hear petitions for partition and dower. The sheriff continued to be collector of taxes, though not by constitutional provision. The duties of the other officials are indicated by their titles.

The new constitution also provided for the creation of townships, which were made bodies corporate for purposes of local government. They were administered by a board of trustees composed of a clerk and two justices of the peace, elected every two years by popular vote in the township. This board of trustees was given control of the taxes and finances, the roads and bridges of the township, and was to assess the taxable property of the township and report the same to the county commissioners for revision. The clerk of the board of trustees was made treasurer of the township. Other township officials included a school committee of three, and a constable. Townships containing cities or towns might elect more than two justices. All the terms were two years.

The significant changes wrought by the new constitution may be summarized as follows: (1) The administration of county affairs was taken from the justices of the peace and placed in the hands of a board of commissioners; (2) Townships were created as separate administrative units; (3) All county and township officers were made elective by popular vote; (4) The justices of the peace were reduced to the position of petty magistrates, with a few administrative duties in connection with the townships; (5) The judicial power of the old county court was distributed among the justices of the peace, the superior court, and the clerk of the superior court.[28]

Constitutional Convention of 1875:

Regardless of its merits, the scheme of government set up in 1868 was repugnant to the citizenship of the state,

[28] McIntosh, *op. cit.*, p. 22.

or at least to the ruling elements. It was considered, and rightly, the work of alien hands. Furthermore, there was an apprehension that it might give the newly enfranchised negroes complete control over the machinery of local government. Finally, the dual form of township and county government was something to which the people were not accustomed. However well it may have worked in the North and West, it could not be transplanted to a new soil and be expected to take root immediately.

In 1875 the state government passed again into the hands of the Democrats, and the so-called "negro rule of the Reconstruction era" was over. Immediately a constitutional convention was called to undo the work of the previous convention. It did not draft a new constitution but it added some very significant amendments. It left the thirteen sections of Article VII, which deal with county and township government, but added a fourteenth which gave the General Assembly "full power by statute to modify, change or abrogate any and all of the provisions of this article, and substitute others in their place, except sections seven, nine, and thirteen." These sections limit the taxing and debt-making powers of municipal corporations. This fourteenth section virtually threw the whole question of local government into the hands of the General Assembly. Acting on this authority, and beginning with the legislature of 1876, most important changes were made, out of which has finally grown our present system.

Changes in County Government since 1876:

Clothed with authority to set up a plan of local government, the legislature was at first inclined to return to the old form with a few modifications.

The board of county commissioners was retained as the administrative body of the county, but instead of being elected by popular vote the members were to be elected by the justices of the peace of the county acting as a body. There were to be three or five commissioners to serve for two years. Their general county functions were the same as before, but they could not levy taxes, purchase realty, remove public buildings, construct or repair bridges costing

more than $500, borrow money, or change townships, without a concurrence of a majority of the justices of the peace of the county, such concurrence to be given in a meeting with the commissioners. The justices were given control over the election machinery of the county, the establishment of voting precincts, and the appointment of registrars and judges. They were also given the power to abolish the office of county treasurer, if they thought best, the duties of the office in that case devolving upon the sheriff, and they could also restore the office after they had abolished it. There are today a few counties in which the sheriff acts as treasurer. The power of the justices to act with the commissioners was repealed in 1895. In that year the election of county commissioners was again given to the popular vote, and it has so remained.

Under the act of 1876 the county commissioners also constituted the board of education of the county, with the register of deeds as clerk and the county treasurer as treasurer of the school fund. They divided the county into school districts, appointed school committees for each district, and appointed a county examiner. Later a separate board of education was created for the county. For a few years the board of education was elected by the board of commissioners and the justices of the peace in joint session. The board of education, in joint session with the commissioners and the justices of the peace, elected the county superintendent of schools. This system, a wheel within a wheel, was a rather mischievous one. It was a denial of local self-government and at the same time a means by which the dominant political party could keep control of the management of the public schools in every county in the state. By an act of 1901[29] the board of education was made to consist of three members elected by the legislature, and this board acting alone chose a county superintendent, who was also the secretary of the board. This method was no more democratic than the one which it succeeded. In 1917[30] a step in the direction of popular control was taken when the present system was adopted. The members of the county boards of education are still chosen by the legislature, but from nomi-

[29] *Public Laws of 1901*, chap. 4.

[30] *Public Laws of 1917*, chap. 74.

nations made in the county primaries or conventions. This method gives the county a larger choice in the matter, but limits the membership usually to those whose politics is the same as that of the dominant party in the legislature.

As already pointed out, the legislature was given the power to alter or abolish any or all of the offices set up in Article VII of the constitution. This includes the following: treasurer, register of deeds, surveyor, commissioners, justices of the peace, and township officers. Besides the changes in the composition and powers of the board of commissioners mentioned above, and the restoration, for a time, of the justices to a place of influence in county administration, no important changes were made in county government. In 1913 acts[31] were passed permitting the commissioners in certain counties to abolish the office of treasurer and designate a bank as fiscal agent for the county. The legislature has also, by general or special acts, created separate highway boards in many of the counties. The judicial officers—sheriff, clerk of superior court, and coroner—are provided for in Article IV of the constitution and thus are not within the reach of legislative interference, except as their duties are provided by statute.

The establishment of townships with separate governments was the most revolutionary feature of the Reconstruction government and the most unwelcome. With all that may be said in favor of township government, it must be said here that it was not indigenous to North Carolina soil and was never satisfactory. Nevertheless, the legislature of 1876 did not abolish the township. It retained it as a subdivision of the county for general administrative purposes, but its powers of local government were taken away, subject to the power of the legislature to create such separate powers in any case by special legislation. The justices of the peace in the township were retained, but they were to be elected by the legislature, three for each township, and one additional justice for each one thousand population in case of cities and towns. They were to hold office for six

[31] *Public Laws of 1913*, chap. 142, and *Public Laws of 1913* (Extra Session), chap. 35.

years instead of two years, and vacancies were filled in some instances by the governor and in others by the clerk of the superior court. Their powers were chiefly judicial and their jurisdiction was not confined to their own township. The principal administrative duty imposed upon the justices in the township was the supervision and control of the public roads and bridges established in the township. For this purpose the justices of the township were made a board of supervisors, and authorized to divide the township roads into sections, appoint overseers for each section, and allot the hands subject to road duty; they were also required personally to inspect the roads and make a report of their condition to the superior court of the county. The board of supervisors also had the power to lay out and discontinue cartways, as distinguished from public roads. This system, or a close approximation to it, is still in use in a few of the mountain counties.

THE PRESENT ORGANIZATION

The Township:

The existing plan of local government in the state leaves the county without a competitor. The township has been stripped of all corporate powers; it is barely more than a "geographical expression." No township officers are elected except the justices of the peace and occasionally one or more constables. Not even all of the justices are chosen by the residents of the township, a large number being appointed by the legislature or by the governor. The terms are two, four, or six years. The justices of the peace receive no pay except their fees and no longer exercise other than judicial powers, except possibly a slight supervision over local roads in a few counties. Their jurisdiction in civil matters extends to causes involving not more than fifty dollars,[32] and their criminal jurisdiction is limited to less serious misdemeanors. The constable is the ministerial officer of the justice's court. While the justices no longer hold the exalted position they once held in the state, their court is our court of first instance and is of considerable importance in our judicial system.

[32] In cases based on contract, $200.

The Constitutional Officers:

The constitution makes reference to the following county officers—sheriff, clerk of superior court, coroner, treasurer, register of deeds, surveyor, and five commissioners. But the amendment of 1875 authorized the General Assembly to alter or abolish most of the provisions touching the county organization at its will. This blanket authority did not extend over the court officers; hence the sheriff, clerk of court, and coroner are still fortified by the constitution. The sheriff is the process officer of the superior court and the chief peace officer of the county. In the majority of the counties he is also tax collector, but this is not a constitutional power and may be taken from him by legislative act. There are serious objections to this combination of functions, and within the last few years several counties have relieved the sheriff of tax collecting. In a few counties the sheriff acts also as treasurer, but this is a bad arrangement. The clerk of the superior court, in addition to keeping the court records, has certain important judicial duties in probate matters, in special proceedings, and as judge of the juvenile court. The coroner conducts inquests in case of sudden and mysterious deaths and acts in place of the sheriff when the latter is a party to a trial.

The other four so-called constitutional officers are not strictly constitutional officers at all, for they are entirely subject to legislative control. The treasurer is custodian of the public money and pays it out under warrants from the proper authority. This office has been abolished in many counties, and the duties are performed either by the sheriff or by a bank selected by the commissioners for that purpose. The register of deeds records deeds, mortgages, and other instruments, issues marriage licenses and ordinarily serves as clerk to the board of commissioners. The surveyor acts for the court when it needs the services of a surveyor and originally surveyed public land for private entry. Since there is very little public land remaining, there is no particular need for retaining the office. When the county commissioners want a road surveyed they usually prefer to employ a civil engineer. The court could also engage a private surveyor when it needed one. The county commissioners,

more often three than five in number, have been more affected by legislative interference than any of the other officers in this group. The framers of the constitution contemplated that the board of county commissioners was to be the only governing body in the county, with general supervision and control over public schools, roads and bridges, elections, penal and charitable institutions, taxation and finance. The General Assembly has steadily curtailed its authority by creating supplementary boards and agencies, so that the board has come to be primarily a fiscal body with only the "odds and ends" of administration remaining.

Statutory Officers and Boards:

Every county now has a county board of education with complete administrative control over the schools. This board has three or five members ordinarily and is appointed by the General Assembly from nominations made by the county primaries or conventions. The board of education elects a county superintendent of schools, who has the general supervision of the schools in the county and also acts as clerk to the board. Their authority does not extend over the special charter school systems within the county. The school board and the superintendent act under the direction of the state superintendent and the state board of education, and thus become a part of the larger educational system. The board of county commissioners is required to levy a sufficient tax, with the amount received from the state, to run the schools for six months; and if funds for a longer term are desired, it is necessary to have the legislative consent and a favorable vote of the people in the district affected. Before the county school tax levy is fixed, the board of education submits to the commissioners a budget showing the estimated amount necessary to run the schools for the year, and the commissioners must levy that amount unless they think the estimate is too large; and in that case the clerk of the superior court acts as arbitrator, either board having a right to appeal to the judge of the superior court.

The commissioners have also lost control over the election machinery in the county. This authority is now vested

in a county board of elections appointed by the state board of elections. It is the duty of the election board to establish voting precincts, appoint election officers, and receive and canvass returns.

In about half of the counties separate highway boards have been set up, and to them has been transferred all matters related to the construction and maintenance of roads and bridges, except those included in the state highway system. There is no uniformity in the county highway organizations. Sometimes each township constitutes a district; sometimes the county is divided into two or three districts; in the largest number of cases the jurisdiction of the highway board is an entire county. Sometimes the members of the highway commission are appointed by the General Assembly; sometimes they are appointed by the county commissioners; and sometimes the county board acts also as the highway board. There is just as little uniformity in achievement as in organization.[33]

Every county has a board of health composed of the chairman of the county commissioners, the county superintendent of schools, the mayor of the county-seat town, and two practicing physicians.[34] In more than a third of the counties thoroughgoing health departments have been organized, with full-time health officers and one or more field nurses. The county health work is related to, and partly supported by, the state health department. Every county has a county physician, appointed by the county commissioners, and it is his duty to look after the health of the inmates of the county institutions.

In 1919 an act[35] was passed making it mandatory for every county in the state to organize for the administration of public welfare. There is a county board of public welfare consisting of three persons appointed by the State Board of Charities and Public Welfare. In all counties of 32,000 population or over a superintendent of public welfare is required.[36] He or she is elected by the county commissioners and the board of education in joint session, with confir-

[33] See chapter on Public Highways.
[34] *North Carolina Consolidated Statutes*, 7064.
[35] *Public Laws of 1919*, chap. 46.
[36] *Public Laws of 1921*, chap. 128.

mation by the state board. Although there are only thirty-one counties in which the election of a superintendent of public welfare is mandatory, there are forty-six counties with full-time superintendents and eleven others with part-time superintendents. In other counties the work devolves upon the county superintendent of schools. The duties of the office include child welfare work, investigation of relief cases, probation and juvenile court work, looking after school attendance, enforcement of child labor laws, and general community organization and welfare.

Two other matters in which the counties may coöperate with the state are in providing county agricultural agents and home demonstration agents. One or both of these agents may be found in a majority of the counties. While the establishment of farm and home demonstration work, county health units, and the employment of a superintendent of public welfare are matters which are optional with the counties, they are activities promoted by the state and regulated by general statutes.

Other officials or agencies common to all the counties are the county attorney, appointed by the commissioners as their legal adviser, a superintendent of the county home, a county tax supervisor with an assistant in each township, and a registrar of vital statistics in each township. These officers are appointed by the county commissioners. The sheriff has several deputies appointed by and responsible to himself. The sheriff or one of his deputies acts as keeper of the county jail. In most counties the clerk of the court and the register of deeds each has a deputy.

Variations as a Result of Public-Local Acts:

No two of the one hundred counties are exactly alike in every detail of their governmental structure. The existence of some of the officers and agencies mentioned above is optional with the county. The manner of administering highway functions is most variable, sometimes the same county operating under two or three different systems in the course of a decade. The school system is essentially the same in all the counties, except that there may be many, few, or no special tax districts.

Most of the variations in county government are due to special acts passed by the legislature to apply to one county only. It would take a volume in itself to point out and describe the features peculiar to individual counties as a result of local legislation. Even were these facts assembled they would be out of date in two years, for these experiments are subject to constant change.

The most common fields of public-local legislation may be indicated, however, in a few sentences. Many counties have abolished the office of treasurer, and some have later restored it. About forty counties have created the office of auditor, his powers and duties varying from those of a mere bookkeeper to those of a strong executive. Usually the auditor is appointed by the commissioners, but in a few cases he is elected by the popular vote. This officer, if capable and clothed with sufficient powers, may be one of the most useful officials in the county. In a few counties there are purchasing agents, and in several others a full-time or half-time chairman of the board with enlarged powers. In Buncombe and Jackson counties all three members of the board serve full time. A few counties have a full-time tax supervisor in addition to the auditor.[37]

Several counties have established a court inferior to the superior court, known as the recorder's court, and with jurisdiction in all of the county or in only a part of it. The recorder himself may be a full-time or a part-time official. The first incumbent of the office is appointed by the commissioners, but his successors are elected by popular vote. The recorder's court may, or may not, have a prosecuting officer. Usually, if there is one, he is chosen in the same manner as the judge. Several counties have established recorder's courts and later abandoned them. In a few counties there is a corps of rural police, responsible to the sheriff or the commissioners as the case may be. Some counties have fire wardens coöperating with the state forestry service.

The institutions and arrangements which exist for the care of dependents and delinquents vary widely in the different counties. The county home and the jail are practically universal. Convict camps exist in those counties

[37] See chap. XII.

where convicts are employed on the public highways. Specialized institutions of a correctional nature are found in a few of the more populous counties. Public hospitals and tuberculosis sanatoria have been established in a number of counties. The superintendents and matrons of these institutions are appointed by the county commissioners on the recommendation of the welfare and health officers.

In concluding this section it should be pointed out that few of these unusual or special agencies of government and welfare, no matter how desirable, can be set up on the initiative of the commissioners. It is necessary to get the sanction of the legislature, and, if an unnecessary expense is involved, there must be a popular referendum. It should be remembered, too, that if the legislature can create, it can also destroy. Any county office, or any county institution, or even the county itself can be abolished at the will of the legislature.

The fact that legislation dealing with a single county does not interest the representatives from other counties makes it possible for local bills to be enacted without much scrutiny. They are passed by courtesy, hundreds of them at every session of the General Assembly. While a local bill may sometimes enable a county to do worth-while things which it could not do under a general act, it is just as likely to curb a county in its progress. Local bills are often enacted without the support or knowledge of the people of the county, or even of the county officers. Sweeping changes are made in the personnel or structure of county government at the whim of the representative. Offices are created and filled, other offices abolished, changes made in the membership of administrative boards, and bond issues authorized; and in various other ways the county is made the victim of legislative interference. What is done one year may be completely overturned two years later. Public-local legislation prevents either uniformity or stability; it is in large part responsible for the chaos which exists.

Centralization versus Decentralization:

To review the development of the county is to be impressed with the presence of one eternal conflict in govern-

ment, that of centralization versus decentralization. There is always a conflict between the state and the local unit, and between the group and the individual. There is a constant shifting and balancing of power in the effort to reconcile their differences. No adjustment satisfies very long. In the interest of individual liberty or local autonomy, centralized authority is overthrown and self-government substituted. After a time popular inertia and indifference permit evils to creep in, and reformers seek relief through centralization of power. Then, after a season, a few powerful interests gain control of the government, and the reformers lead the fight in restoring it to the people. It is the ebb and flow of democracy. A government of the few always tends to become a government for the few, while popular government tends to fall down because it demands a vigilance and an alertness which are never long maintained.

From the beginning the county and the state have had a close relationship, though a conflict has always been present in the effort to reconcile the state's interest in county functions with the desire of the local people to elect their own officers and in a measure to control the local administration of state laws. The waste and inefficiency which are now so prevalent in county government appear to be the result of decentralization. The political reformer says, give the county a strong executive and subject county affairs to a rigid state control, and we will have efficiency. The educator says, give the people universal education, develop a superior school system, and democracy will flourish. Both are right; good government depends upon an intelligent citizenship and upon a simple, direct organization, but government is never so nicely adjusted that it rests in perfect balance. Government is a human institution, and it is the nature of man to "weary in well-doing." When government is functioning well the citizen relaxes, and when he relaxes it ceases to function so well.

The student of government must never lose sight of the human factor. He must understand the limitations, the prejudices, the fears, and the aspirations of the citizens. The county government problem, in North Carolina at least, is very largely a rural problem. It affects a rural people, a

rural-minded people, and that means a people who are conservative, individualistic, skeptical, close-fisted, yet withal a people who are ambitious, loyal, stable, and dependable. Great improvements in county government are possible by working *with* these people, but little will be accomplished by working *for* them. Their temperament, their attitudes, their traditions must be understood and respected. "Whatever is accomplished," says Dr. E. C. Branson, "must grow out of the nature of human nature as it exists in North Carolina."

With this brief historical background we shall undertake a more or less detailed analysis of the North Carolina county, its governmental structure, its officers and institutions. We shall attempt to discover the merits and weaknesses of the existing organization and venture to suggest certain improvements that might be made. In the main, suggested changes will be those which have been successfully adopted in some counties and seem to merit a wider application.

Chapter II

THE COUNTY AS A GEOGRAPHIC AREA

GENERAL CHARACTERISTICS

Universality of the County:

In forty-seven of the states the major divisions, for purposes of local administration are termed counties. In Louisiana the corresponding divisions are known as parishes. There are also a few cities which are independent of the county organizations and thus constitute primary divisions of the states—namely, Baltimore, St. Louis, and twenty cities in Virginia. The total number of counties, or equivalent divisions, in continental United States in 1920 was 3,064. This count includes the twenty-two independent cities mentioned above and the Louisiana parishes, but does not include the District of Columbia.[1]

The smallest states have the smallest number of counties, Delaware having three and Rhode Island five. Massachusetts, with fourteen, has fewer than any other state in proportion to population. Texas, with 253, has the largest number of counties as well as some of the largest in size.

Area and Population:

In area the counties show great differences. Excluding the cities of Virginia, the smallest counties are New York County (Manhattan Borough) with twenty-two square miles and Bristol County, Rhode Island, with twenty-four. In addition to St. Louis, Baltimore, and the twenty independent cities of Virginia, there are seventeen counties with an area of less than one hundred square miles each. Most of these are urban counties, five of them being the counties (or boroughs) which comprise the city of New York. The largest county is San Bernardino County, California, with an area of 20,175 square miles. While there are sixty

[1] *United States Census*, 1920.

counties with areas exceeding five thousand square miles, the average is 913, and the median is about six hundred. North Carolina counties average 487 square miles of land area.

In population and in density of population the counties show great diversity. At one extreme is Crane County, Texas, with thirty-seven inhabitants in 1920, and at the other extreme, Cook County, Illinois, with a population of 3,053,017. Altogether there are twenty-six counties with less than one thousand people each, and forty-seven with more than a quarter of a million each. In density of population the range is from .042 to 103,822.9 per square mile. Sixty-three counties average less than one person per square mile, while twenty-three others have more than a thousand inhabitants for a like area.

By grouping a few of these illustrations, one can more easily see what a variable thing a county is.[2]

Name of County	*State*	*Sq. Mi*	*Population*	*Pop. Per Sq. Mi.*
Cook County	Ill.	933	3,053,017	3,272.3
New York County	N. Y.	22	2,284,103	103,822.9
Los Angeles County	Cal.	4,115	936,455	227.6
San Francisco County	Cal.	42	506,676	12,063.7
San Bernardino County	Cal.	20,175	73,401	3.6
Bristol County	R. I.	24	23,113	963.0
Crockett County	Tex.	3,215	1,500	0.5
Crane County	Tex.	878	37	.042

NORTH CAROLINA COUNTIES

Size:

Of North Carolina's one hundred counties the smallest in area is Chowan with 165 square miles of territory. Mitchell is the next smallest with 213 square miles, the county having surrendered a portion of its territory in 1911 to help form Avery County. Clay and Camden each has an area of 220 square miles. The three largest counties are Robeson with 990 square miles, Bladen with 976, and Columbus with 933. These are the only counties with an area greater than nine hundred square miles.

[2] *Ibid.*

Since the total land area of the state is 48,740[3] square miles, the mean area of the counties is 487.4. The median area is 469.5, and half of the counties vary less than one hundred and twenty square miles from this area. Seventy of the counties vary less than one hundred and fifty square miles from the mean area. It is thus seen that, in the main, the counties of the state are fairly uniform in size.

Population and Density:

The 1920 census gave the state a population of 2,559,123, or an average of 52.5 persons per square mile. Thirty-six counties had a density greater than the state average, and sixty-four less. Only nine counties, Buncombe, Gaston, Rowan, Mecklenburg, Forsyth, Guilford, Durham, Wake, and Wilson, had more than ninety persons to the square mile, while four counties, Graham, Hyde, Dare, and Tyrrell, had from six to eighteen. Fourteen of the counties showed a decrease in population since 1910, but in four cases this was due to reduction in area. Two new counties, Hoke and Avery, have been organized since 1910. The smallest county as to population is Clay, with 4,646; next, Tyrrell, with 4,849; third, Graham, with 4,872. Twelve counties have a population of less than 10,000 each, and eighteen others have less than 15,000 each. The 1920 census gave Mecklenburg the largest population, with 80,695; Guilford ranked second with 79,272; and Forsyth third, with 77,269. Sixteen counties had a population exceeding 40,000.

Classification:

Not more than six of the North Carolina counties can be classed otherwise than rural. Durham, New Hanover, Mecklenburg, and Forsyth each contains a city with more than half of the total population. Even though the cities are small these counties will qualify as urban counties. Since High Point and Greensboro, together, contain more than half of Guilford County's population, it may properly be called an urban county. Possibly Gaston County should be put in this same category, for although it has only one

[3] Bulletin 689, U. S. Geological Survey, p. 219, gives 52,426 square miles as North Carolina's area (land and water).

city, it has several census-size towns. In 1920 North Carolina had fifty-two counties without a census-size town (2,500 or more). In spite of the rapid urbanization of the state, not more than six or eight counties are likely to creep out of this class by 1930. There were twenty-six counties which did not have a town of 1,000 people in 1920.

THE CREATION OF NEW COUNTIES

Colonial Period:

It will be remembered that the large divisions which the proprietors were pleased to term "counties" were abolished in 1739, and that the precincts which composed them were at that time denominated counties. Previous to that time the precincts fulfilled the local function of government and were equivalent to the modern county. There were fourteen of these original counties, all in the eastern part of the state and some of them rather large. Their subdivision and the creation of new counties farther west raised the number of counties to thirty-five when North Carolina became a state in 1776. During the first hundred years of statehood fifty-nine new counties were erected. In the last fifty years only six more have been added, so that today the number stands at an even hundred.

The counties have, in most instances at least, been set up for the convenience of the people who reside in the district affected. For the most part, they have been fashioned in accord with the distribution of population and in accord with natural boundaries. In discussing the formation of counties in the colonial period, Guess says:

> The manner of the erection of the precincts, and later of the counties, occasioned many disputes. The first of significance seems to have arisen with Governor Burrington in 1733. The Assembly claimed that the governor and the council alone did not have the right of creating new precincts. Burrington had a controversy with two members of the council about this point and succeeded in showing that, save in the case of one precinct formed in 1722, all had been erected by the governor without the coöperation of the legislature. By an act of 1715 the legislature recognized as legal units of representation the precincts which down to that time had been established by ordinances.

In 1754 Governor Dobbs was instructed to erect counties in the southern and western part of the province whenever he and the council deemed it fit. This was to be done by charters of incorporation which gave the counties the privilege of sending representatives to the assembly, but with absolute disregard of the assembly itself. This right of the governor was denied by many of the colonists, and for some time after his administration began, Governor Dobbs was not enabled to carry out his intentions. In 1759 the council ordered that the governor issue a proclamation to the effect that, upon the dissolution of the assembly elected at that time, no writs of election could be issued to the several counties unless they took out charters of incorporation from the governor. After 1759 the rights of representation apparently depended upon the charters issued by the governor, and the colonists at that time relinquished their claim in the matter.

The manner of the creation of the counties seems thus to have remained largely unsettled. Controversies and disputes over the question were frequent. The indications are that the precincts, and later the counties, were erected by the governor and the council with considerable disregard for the assembly, though that plan was not strictly adhered to.[4]

Manner of Erecting Counties after 1776:

Since North Carolina attained statehood, all the new counties have been created by legislative enactment. While the constitution refers to counties and county officers, it nowhere states how, or by what authority, a county may be created. The court has ruled, however, that it is part of the legislative function to divide the state into convenient divisions and to control the divisions so created. The power to create a county also implies the power to abolish, and it is entirely within the province of the legislature to abolish or change the boundaries of an existing county. For instance, in 1846 the legislature created Polk County. Two years later the act was repealed. One of the Polk County officials brought suit. The Supreme Court upheld the action of the legislature. A few quotations from this decision will help to clarify the relation of the legislature to the county:

From the formation of our State government, the General Assembly has, from time to time, changed the limits of counties,

[4] Guess, *op. cit.*, pp. 17-18.

and has, over and over again, made two counties out of one, so that in many instances, even the name of the old county has been lost. . . . As the legislature has, undoubtedly, the power to divide counties, when they are too large, there is the same power to unite them when they are too small; the power in both cases being derived from the fact, that by the Constitution "all legislative power is vested in the General Assembly," which necessarily embraces the right to divide the State into counties of convenient size, for the good government of the whole. . . . When a county is established, it is done at the mere will of the legislature, because, in its opinion, the public good will be thereby promoted.

It is true the constitution invests every county with certain rights, as incident to its existence as a county. . . . But these incidental rights cannot be . . . made to interfere with the control of the legislature, as an instrument for the good government and management of the whole State.

The Constitution preordains these rights, but they are put expressly as incidents to the existence of counties; they have no legislative bearing upon the power to create and abolish counties, as may to the wisdom of the legislature seem fit.[5]

Motives Prompting the Establishment of New Counties:

Even though the county may be solely the creature of the legislature, the initiative for the establishment of a new county has usually, if not always, been taken by the residents of the area affected. As population multiplied and settlements were made in the outlying parts of a county, the inhabitants of communities distant from the seat of government began to petition the legislature for the erection of counties in their respective neighborhoods, in order that the administration of public affairs might be carried on with greater convenience. Their request was not always granted. Before some of the mountain counties were created, there were people living a hundred miles from the nearest courthouse.

In many states a minimum area for counties is named in their respective constitutions. Others fix a minimum population limit. In a few states counties may be formed only with the consent of the voters in the district affected, and even more general is the provision that changes in the

[5] Mills *v.* Williams, 33 N. C. 560.

boundary lines of existing counties may be made only after a popular referendum has approved. There are no such constitutional limitations in North Carolina.

While the principal motive in the formation of new counties has been, generally, the convenience of the local community, it is certain that often there has been a political motive. For instance, in colonial days, Governor Tryon declared that the creation of Guilford out of Rowan and Orange was "a truly political act," for it separated the main body of the Regulators from Orange and put them in the new county.[6] The political motive was always present from about 1784 until 1835. Each county was entitled to a representative in the Assembly, and the East, which had dominated the state from the beginning, was jealous of the growing power of the West. Consequently, whenever the legislature created a new county in the West, the eastern representatives insisted that there be a new county formed in the East. After the constitution was amended in 1835, representation was based on population (at least to some extent), and the race for counties ceased.

Some of the more recent counties have been formed quite as much to satisfy a local pride as to meet a real need. Towns have had, and some still have, an ambition to become county seats. It is undoubtedly true that Hoke and Lee counties were fostered primarily by the towns of Raeford and Sanford respectively. High Point, Rocky Mount, and Elkin each has entertained an ambition to become a county capital. This spirit is not to be criticized. When a town and its surrounding trade territory have developed a community consciousness, it is logical and proper to demand political recognition. It would be well if all of our counties conformed to natural communities. Some of them do, fairly closely, especially those which have natural boundaries such as rivers and mountain ranges. Even where there are no natural boundaries a county may represent a real community if the political boundaries define the whole of a trade area. It is a mistake, however, to draw the county lines so close to the trade center that it leaves a fringe of rural territory outside. In the case of the older counties the boundaries were drawn

[6] *Colonial Records*, VIII, 527.

before the currents of trade could be determined, and hence political boundaries sometimes cut across natural communities. Quite frequently there is a transfer of territory from one county to another. Within the last year a small area was transferred from Yadkin County to Forsyth County, and the transfer of whole townships from Pender to New Hanover and from Henderson to Buncombe is being agitated. Such transfers ought not to be resisted if they are to the advantage of the people who live in the affected areas, and if the counties which lose territory are not thereby injured financially.

Movement for New Counties Subsiding:

The agitation for new counties has now largely subsided. There have been no new counties in fifteen years and only six in fifty years. The increased burden of taxation has made it inexpedient for a small area with a limited population and a limited amount of wealth, to erect a set of county buildings and operate a county government. Furthermore, the automobile and the improved highway have removed the necessity for a seat of government every few miles. Obviously, we have too many counties at present. There are twenty-five counties which do not have $10,000,000 in taxables (1925 figures) and fifty-two counties which do not have a census-size town, or at least did not have in 1920. It makes it very burdensome for these counties to maintain a full set of officers and operate all the agencies and institutions of a county. Nevertheless, the force of sentiment and tradition will probably be too powerful to permit a recasting of the counties. The wholesale changing of county boundaries would also make for confusion, on account of the fact that land is described and recorded in terms of the existing counties.

Possible Consolidation of Counties:

It is possible that in the next few years we shall witness the consolidation of counties here and there over the state. This can be done without disturbing any boundaries, except to obliterate the dividing line. Township names can remain the same. There has been some agitation to con-

solidate Camden and Pasquotank counties. If this can be consummated it will be a real gain for both counties, as well as a wholesome precedent. Probably there are not many places where consolidation is feasible, but there are certainly a few. Despite the temporary inconvenience, a shifting of boundaries here and there would help to equalize the burden of county government, as well as make for a more vigorous community spirit.

The advantages of county consolidation are being discussed in other states. Mr. Fred L. Morris, a Kansas business man, has this to say on the subject:

> The overhead expense in Kansas government is "eating the taxes." . . . The way to reduce the cost of government is to consolidate counties. We have more counties than we need. Kansas has 105 counties, each with a complete set of county officials. If counties of one hundred thousand can get along with the county officials provided by the Kansas law, why should a county of less than ten thousand have need of the same set of officials?
>
> There was a time when nearness to the county seat was important. That was in the day of the old lumber wagon and bad roads. It makes no difference now. The motor car, the telephone, the free mail delivery, and the radio have obliterated distance. A county seat is as accessible now sixty miles distant as it was in the old day at fifteen miles.
>
> If Kansas should fix the population basis for its counties at fifty thousand, say, it could reduce the expense of its local government by sixty per cent over the present cost of maintaining county government.[7]

The construction of improved highways radiating from the county seat justifies a larger county than has been justifiable heretofore. On the other hand, the absence of a township government argues against large counties. There ought to be some unit of local government small enough to permit acquaintance among the citizens. In the South there is a remarkably strong sense of county consciousness and county pride. A person frequently gives his address in terms of the county; he boasts of his county's resources. This sense of

[7] *Kansas City Star*, May 5, 1926.

county loyalty is desirable; it makes for an alert citizenship; it should be encouraged. In naming the counties and county seats, the state has honored many of its "favorite sons." To read the list of counties is to read the names of the men in North Carolina's Hall of Fame, the list not being limited, however, to those who were born in the state or whose service was alone for the state. The county in North Carolina is an institution about which there clusters a great deal of sentiment and tradition. These are attributes which, if recognized and respected, may be an aid to progress, but if ignored or offended may be serious obstacles.

THE COUNTY SEAT

Location:

An examination of the map of North Carolina will show that the county seats, in almost every instance, are near the geographical center of the county. At first thought this seems to be logical and desirable. There are other factors to be considered, however. The geographical center is not necessarily the center of population or the most accessible point. In those counties where the largest town is even approximately near the center of the county, it is the logical place for the courthouse to be located, and there is where it may be found in many counties. Either the original site selected for a county seat was well chosen, or the courthouse has been moved from an unfavorable site to its present location.

In many counties, however, the courthouse is not in the largest town. This may be because such town is remote from the center of the county or because tradition and sentiment have been sufficiently powerful to hold the courthouse where it has been. Burlington and Mount Airy are both near enough the center of their respective counties to have a claim to the courthouse, but in both counties there were local factors which might have made it unwise or unfair to shift the county seat to the larger place. Now pretentious courthouses have been built on the old sites, thus settling the question of location for years to come.

With county lines remaining as they are, probably few improvements can be made in the location of county seats;

yet, when one considers that there are thirty-four county-seat towns with less than one thousand inhabitants, while there are sixty-eight towns with more than one thousand population which are not county seats, he must question the wisdom displayed in locating county seats and in fixing county boundaries. Of course currents of trade and movements of population are not easy to anticipate. Furthermore, it has not been possible until recently to surmount natural barriers and consciously to direct the movements of people.

Character:

There are two reasons which help to explain why so many county-seat towns have remained small. In the first place, they were usually located in the exact center of the county, but in the years which followed the county did not develop evenly. The presence of water power, the building of a railroad, the variations in soil productiveness, or some other factor may have caused the development of a rival town some miles distant, which in time became the trade center of the county. Even a well established trade center may lose its prominence. This is illustrated in those towns which rose and declined with the turpentine industry. Trade areas shift, too, with changing routes and modes of transportation, the areas tending to become larger with the coming of the automobile.

In the second place, the kind of people who have attached themselves to the county seat has not always been of the most enterprising type. They have sometimes represented an oligarchy of lawyers and politicians, office-holders and ex-officeholders, who drew their sustenance from the public purse and were not interested in an industrial development. They preferred to see the county seat remain a quiet village for people of culture and leisure. Many instances might be cited, illustrating this attitude. One county seat frowns upon the establishment of a cotton mill; another refuses a right of way to the railroad; another drives away the railroad shops. The towns which have taken this attitude have remained, as they desired, quiet villages. The air of culture and leisure has remained, but the young people in these towns are tiring of so much

culture and so little money, and they are moving over into the industrial towns. That is why so many county-seat towns are lagging behind their neighbors in population and wealth. They have ceased to be county capitals in the fullest sense of the term.

The presence of a courthouse is an asset to a town in which the business element predominates, but it seems to be of doubtful benefit if the political element is dominant.

Chapter III

THE COUNTY AS A POLITICAL UNIT

THE NATURE AND FUNCTIONS OF THE COUNTY

As an Agency of the State:

Counties are created by, and constitute a part of, the state government. "They are created for political and civil purposes of the state, and may be created without special regard to the will, wish, or convenience of the people who inhabit them. They are instrumentalities of the state government, and subject to its legislative control; they possess such corporate powers and delegated authority as the legislature may deem fit to confer upon them, and such power and authority must be exercised in the way, and only for the purposes prescribed by legislative enactment; and moreover they are always subject to legislative control, and their powers may be abolished, enlarged, abridged, or modified."[1]

In North Carolina a particular county is strictly a creature of the legislature, for, while the constitution recognizes counties, it has nothing to say as to the manner in which they shall be created. In most states the constitution imposes certain limitations upon the legislature, such as to deny it the power to change county seats or county boundaries arbitrarily, but in North Carolina there are no limitations of any sort. Counties may be created, changed, or abolished at the legislative will.[2]

In the exercise of ordinary governmental functions counties are simply agencies of the state constituted for the convenience of local administration, and in the exercise of such functions they are subject to almost unlimited legislative control, except when limited by constitutional provisions.[3] The legislature can direct them to do as a duty all such matters as they can empower them to do. In matters which the

[1] Dare *v.* Currituck, 95 N. C. 158. [2] Tate *v.* Commissioners, 122 N. C. 813.
[3] Jones *v.* Commissioners, 137 N. C. 596.

statute has legally committed to the discretion of the county commissioners, the courts cannot interfere to restrain or supervise the exercise of that discretion. But the legislature may restrict the authority which it, itself, has conferred.[4]

The *Consolidated Statutes* defines the county and states its general powers as follows: "Every county is a body politic and corporate, and has the powers prescribed by statute, and no others; which powers can only be exercised by the board of commissioners, or in pursuance of a resolution adopted by them."[5] The county thus has a dual nature. It is a "body politic," that is, a civil division of the state created to assist in the administration of the state government. It is also a "body corporate."

As a Quasi-Corporation:

A corporation is a legal entity, a juristic person, created by the legislature and enjoying certain specified powers, exercising some specific functions, vested with certain privileges, and owing certain obligations. It may be either a private or a public corporation. Private corporations have no governmental powers, and they are in no sense instrumentalities of the state. Furthermore, the legislative act or charter creating the private corporation constitutes a contract between the members of the corporation and the state itself, while the charter of a public corporation is not a contract.[6]

Public corporations do have governmental powers; they exist exclusively for governmental purposes and are instrumentalities of the state. But even public corporations are of various grades. The municipal corporation is of the highest grade. It is created at the behest of those who are within its jurisdiction, and its powers and functions are intended to suit their convenience. It is not designed so much to serve the purposes of the state as for the advantage of the particular community, though it may be used as an area through which the state government functions. Cities and towns are true municipal corporations.

[4] Tate *v.* Commissioners, 122 N. C. 814. [5] *Consolidated Statutes*, 1290.
[6] Porter, "Definition of a County," *County Government and Administration in Iowa*, p. 14.

Counties, on the other hand, are not, in a strictly legal sense, municipal corporations, for they do not exist primarily to satisfy the needs of the locality. They are used as instrumentalities of the state government in ways that municipal corporations are not. They are, in a word, political organizations created by the state for the more convenient and effective exercise of governmental powers. They are, however, more than mere administrative districts. They have governmental machinery through which they determine policies, they elect their own officers, and they enjoy many of the prerogatives of local self-government. They are what has been called quasi-corporations, and this designation distinguishes them on the one hand from private corporations aggregate, and on the other from municipal corporations proper. Unlike municipal corporations, they are not ordinarily liable to be sued civilly for the manner in which they exercise, or fail to exercise, their corporate powers. They may be sued only in such cases and for such causes as may be provided for and allowed by the statute.[7] They are like corporations, however, in many respects. As bodies corporate, they have a status in law very similar to that of private corporations. They may buy and sell property. They may enter into business contracts that are enforcible in the courts. They may employ labor. They may sue or be sued on contracts, but, as pointed out above, they are not usually liable for damages due to the negligence of their officers or employees.

It is true that the North Carolina constitution classifies counties and townships as municipal corporations, but the court has ruled that they are not strictly such. They have a corporate existence, but their powers are less than those of a full municipal corporation. The county may exercise its corporate powers only in the furtherance of governmental functions. Thus it can buy land, but only in order to use it for some public purpose. It can enter into contracts and employ persons to work, but only in the furtherance of political functions. "Counties are simply governmental auxiliaries, created bodies corporate for civil and political purposes only. To the statute they owe their creation, and

[7] White *v.* Commissioners, 90 N. C. 439.

the statute confers upon them all the powers which they possess, prescribes all the duties which they owe, and imposes all the liabilities to which they are subject."[8]

As an Area for the Administration of Justice:

The county in North Carolina, as in every other state, has always been an important area for the administration of justice. For two hundred years the county court was the central feature of our local government. It exercised both judicial and administrative functions. Since 1868 there has been a more or less complete differentiation of functions. There are one hundred counties and only twenty superior court districts. The judge and solicitor serve in the several counties which comprise a district. Otherwise the county is the recognized area for the administration of justice, and cases arising within its boundaries are tried in the county. Each county has its courthouse, its jail, and all the physical equipment necessary to the conduct of judicial business. Except the judge and solicitor, all the officials of the court are elected by the voters of the county. Grand and petit jury lists are drawn from the county taxpayers. Each county has its own sessions of court; it has its own sheriff and clerk; it keeps its own records. It is the unit of judicial administration, even when the reference is to the superior court. There are numerous counties in which an inferior court has been set up with a county-wide jurisdiction. This may be either a general county court or a recorder's court. Even justices of the peace have a county-wide jurisdiction, so that whatever court one has in mind, the county is the judicial unit.

As a Unit of Representation in the General Assembly:

In many of the states the county serves as a district for choosing representatives to the legislature. This is the case in North Carolina. The constitution provides that there shall be one hundred and twenty members in the House of Representatives and fifty members in the Senate. It further provides that the members of the lower house "shall be elected by the counties respectively, according to their

[8] Soper *v.* Henry County, Iowa, 26 Iowa 264, quoted in Porter, *op. cit.*, p. 16.

population, and each county shall have at least one representative in the House of Representatives, although it may not contain the requisite ratio of population."[9] Since there are one hundred counties from which to choose one hundred and twenty representatives, the population ratio must necessarily be somewhat varying. Eighty-four counties have one representative each, although the population of these counties varies from 4,646 in Clay County to 37,956 in Iredell County.[10] Of the remaining counties, twelve have two representatives each, and four have three each.

There are thirty-three senatorial districts, each sending one or two members to the upper house. Pitt, Robeson, Rowan, Forsyth, Gaston, and Buncombe counties each constitutes a senatorial district. The other districts are combinations of counties. The constitution provides that "no county shall be divided in the formation of a Senate district, unless such county shall be equitably entitled to two or more senators."[11] The county has, therefore, been recognized as a political community and made, as far as practicable, the basis of representation.

THE RELATIVE IMPORTANCE OF THE COUNTY

County powers and functions are not uniform in all the states, and the general importance of the county varies considerably in the different states.

There developed in the English colonies in America four principal types of local government. These four types exist today, and they may be compared in three particulars: (1) the relative importance of the township and the county; (2) the character of the principal unit of government; (3) the degree of organic connection existing between the township and the county. Dr. Kirk H. Porter has examined the several types of local government in these particulars and has grouped the states accordingly.[12] His grouping and a condensation of his explanation and analysis follow.

[9] *North Carolina Constitution*, art. II, sec. 5.
[10] *United States Census*, 1920.
[11] *North Carolina Constitution*, art. II, sec. 4.
[12] *County and Township Government in the United States*, chap. IV.

The New England Type:

This group of states includes Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.

Here the town is more important than the county. The town has charge of highways, poor relief, schools, the maintenance of law and order, the assessment and collection of taxes, and most of the more important functions of local government. The town embraces the urban community that may be within its borders and thus quite frequently undertakes street paving, the operation of water and sewer systems, and other functions usually performed by villages or municipalities. The town, rather than the county, is used as an administrative district for state business. The most important purpose for which the county exists is the administration of justice. In addition to a full set of judicial officers, there are county officers who have duties in connection with the assessment and collection of taxes. The town meeting is the chief organ of government in the town and exercises all the powers of the town that are not specifically bestowed on particular officers. These officers are the selectmen, a town clerk, an assessor, a treasurer, an overseer of the poor, a highway commissioner, several constables and justices of the peace, and a school board. There is no organic connection between the county and the town, for there is no representative county board composed of members elected from the respective towns.

The North Central Type:

In the so-called North Central group there are six states, namely, New York, New Jersey, Michigan, Illinois, Wisconsin, and Nebraska.

Their type of local government may be called the "township-county" or "supervisor" type. The distinguishing feature is that the county is controlled by a board of supervisors composed of one supervisor from each township or city ward in the county. This means that the boards are often quite large. The individual supervisor is the chief administrative officer of the township; collectively the supervisors make up the county board. This establishes a very definite organic connection between township and county.

Furthermore, this arrangement emphasizes the importance of the township, for in reality it is township officers who manage county affairs. The county is considerably more important, however, than it is in New England and the township correspondingly less important. Functions are divided between the two units. This makes for duplication of governmental machinery, and the modern tendency is a decline in the importance of the township and in the number of its functions.

The South Central Type:

This group includes the following states: Pennsylvania, Ohio, Indiana, Minnesota, Iowa, Missouri, Arkansas, North Dakota, South Dakota, Kansas, and Oklahoma.

There has developed here a different combination of the township and the county and it may be called for convenience the "county-township" or "commissioner" type of local government. The distinguishing features are that there is no organic connection between the two units of government, the county is controlled by a board of commissioners of from three to seven members, popularly elected, usually at large, and the township is a distinctly subordinate unit. Indeed, in this group of states, the township is rapidly becoming little more than an administrative district existing in order to facilitate the administration of county business. Most of the important functions of local government are under the control of county officers. While the township is still maintained as a distinct unit of government with its own organization, to perform such functions as caring for highways, extending poor relief and assessing property, it is greatly overshadowed by the county organization. This is probably an improvement over the "supervisor" plan. It was the "commissioner" plan which was set up in North Carolina in 1868, and some of its features still remain.

The Southern and Far Western Type:

There are twenty-five states where the townships do not exist at all, or have only a shadowy existence. In California, Nevada, Montana, South Carolina, and North Carolina, townships exist in name, but do not possess the character-

istic township organization. The other twenty states are Delaware, Maryland, Virginia, Georgia, Florida, Alabama, Tennessee, Kentucky, West Virginia, Mississippi, Louisiana, Texas, New Mexico, Arizona, Colorado, Wyoming, Utah, Idaho, Washington, and Oregon.

The conditions in the South in colonial times were not favorable to the development of towns or other small areas of government, and hence counties were organized and they promptly assumed all of the functions of local government. The other states in this group were settled in large part by people from the South Atlantic states, and they carried their plan of government with them. In all of them the county is the only significant unit of local government and performs all the functions of local government. Where the township has existed, it has been no more than a voting precinct, a magistrate's district, and at times a road district.

Merits of Each Type of Local Organization:

It is not the place here to pick out in any detailed manner the merits and faults of each type. It may be well to point out, however, that none of the systems is working with entire satisfaction. Local government in every state in the Union is manifesting serious deficiencies. The New England town meeting has often been heralded as the model of democratic government, and in theory it is ideal. But in actual operation, under modern conditions, it is not so idyllic. Where the unit is too large or too populous, or where the citizens are indifferent or reactionary, the system falls down. The New England system has much to commend it where it is already established and rooted, but it is doubtful if it could be transplanted with any degree of success. In many respects the New England town takes the place of the county; it is smaller territorially, but has as many people as the average southern county. With good roads bringing the county seat within a few minutes of all the people of the county, there is little to be gained by substituting a smaller unit for general purposes of administration.

In the states which have both county and township organizations, there is overlapping of functions, duplication of machinery, and excessive cost of administration.

A township is usually an artificial unit without economic unity or social consciousness. Lacking these qualities, it cannot grow into a vigorous unit of government. Dr. Porter says:

> The town and the township have lost their hold upon the imagination of the people, and township affairs no longer excite interest and enthusiasm. The individual is no longer so much interested in local self-government as he is in efficiency. He wants things done, and done well, and as economically as possible. He is very willing to sacrifice some of the opportunities for self-government in order to attain these ends. As this sentiment grows the township steadily declines, its government is apt to fall into incompetent hands, and it fails to perform well even those functions which might properly be left to local officials.[13]

The township does not exist anywhere in the South except in the Carolinas, where it was introduced in Reconstruction days. Being a foreign institution, introduced by alien hands, it was never accorded a fair trial. Township boundaries were retained, but the township organization was abandoned after only seven years of trial, and that in the face of prejudice. Even had there been no prejudice against it, the township could hardly have been expected to give satisfaction. Not a native growth, it did not fit southern conditions. Possibly the absence of a local unit of government, that is, one smaller than the county, has been a denial of local self-government and may have hindered the growth of a lively sense of citizenship. But there is a diminishing need for the township. Modern means of transportation have so reduced distances and have so multiplied social contacts, that the people of a whole county are now more closely knit together than those of a township once were. The county seat is as accessible today as the neighborhood village a generation ago. The county is a more natural unit, for the county seat forms a trade center. Townships are often entirely rural, with no focus of common interest. Where the township coincides with a consolidated school district or a natural social or trade area, that is, where it defines a real community, it is desirable that it be

[13] Op. cit., p. 65.

given a name and a degree of political recognition. But this subject will be discussed in a subsequent chapter and can be passed over here.

The organization of local government in North Carolina probably fits the needs of the locality better than any of the other three types would. At any rate, it is what we have, and should be improved rather than discarded in favor of another type of doubtful superiority.

County Similarities:

Even though the powers, functions, and general importance of the county vary in the several states, counties are alike in some respects in all the states. Everywhere it is a district for the administration of justice. Courts of general civil and criminal jurisdiction are held at frequent intervals in each county. Sometimes the presiding judges and prosecuting attorneys are selected from a larger district and serve in several counties, as in North Carolina, but the county is the judicial unit, and the clerical and executive officers of the court are ordinarily considered county officers. In connection with the administration of justice, courthouses and jails are provided and maintained in each county. In all states the county is to some extent a police and militia district. In most of the states it is the district for probate administration and the public record of land titles.[14]

Outside of the New England states, the county has important functions in the construction and maintenance of roads and bridges, and sometimes of other public works. In most states it is the district for the administration of poor relief. Generally there is some county school officer, and in many of the Southern states the county is the primary unit for school administration.

Everywhere the county levies taxes for its purposes, subject to a limited control by the state. The county usually, but not always, collects its own taxes and sometimes collects for other units. In several states it is a district for the assessment of taxes.

In all of the states the county is an important district for election purposes. Most county officers are elective; the

[14] Fairlie, *Local Government in Counties, Towns and Villages*, p. 65.

county is always a unit for canvassing the returns for state officers; and in most states it is the district for electing members of the state legislature. The county is an important unit, and the county committee an important factor, in the organization of political parties.

Every county has a county seat, where the courts are held and most of the county officers have their offices. Here a courthouse and jail are provided, and if there are other county institutions, such as hospitals or homes for dependents, they are usually near the county seat.

GENERAL POWERS

As already pointed out, the county possesses no inherent or residual power. All of its powers are specifically delegated to it by the state and are enumerated in the statutes, or are necessarily implied. It is primarily an area of state administration. It is only in a limited way a unit of local self-government. Yet, to the extent that a county may determine its own policies, levy its own taxes, and appropriate its own funds, it is a body corporate, a self-governing community.

In North Carolina the statutes name four corporate powers of the county:[15] (1) A county is authorized to sue and be sued in the name of the county. If the county fails to meet its obligations, it may be sued through the courts in the same way as an individual, or if an individual or another corporation fails to meet its obligations to the county, the county may sue. While a person may sue the county if he has a cause of action, the court has not recognized negligence on the part of county officers or agents as a cause of action.[16] Counties can not be held liable for the negligence of their servants except by express statutory provision, and there is none in this state. In other words, a county is not liable for tort. Formerly counties were sued in the name of the commissioners,[17] but now they sue and are sued in the name of the county;[18] (2) The county may purchase and hold lands within its limits and for the use of its inhabitants, subject to the supervision of the General

[15] *Consolidated Statutes*, 1291. [16] Pritchard *v.* Commissioners, 126 N. C. 912.
[17] *North Carolina Code*, sec. 704. [18] *North Carolina Revisal*, sec. 1310.

Assembly. The county can not speculate in land. It can acquire and use land only for public purposes. This does not mean that it must dispose at once of property which it no longer needs, or that it cannot rent it until the time when it can negotiate a favorable sale. The power to buy and sell real estate does not confer authority to mortgage.[19] The commissioners can not encumber with a mortgage property held for a corporate purpose; (3) A county may make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers; (4) It may make such orders for the disposition or use of its property as the interests of the inhabitants require.

The powers enjoyed by a county can be exercised only by the board of commissioners, or in pursuance of a resolution adopted by them. It constitutes the local governing body of the county. In the next chapter the specific powers of a county, as exercised by the commissioners, will be enumerated and discussed in considerable detail.

[19] Vaughn *v.* Commissioners, 118 N. C. 636.

Chapter IV

THE BOARD OF COUNTY COMMISSIONERS

CHARACTER

Though varying in structure and in name, there exists in every state except Rhode Island a local agency in each county, which levies taxes, performs certain administrative functions, and is in an enlarged sense the representative and guardian of the county.[1] In general, county boards in the United States may be classified into two groups: the small boards of commissioners elected from the county at large or from districts into which the county has been divided; and the larger boards composed of representatives from the townships. North Carolina has the small board or the commissioner type of county government.

In the organization of county government there has been only a very limited application of the doctrine of the separation of powers. The county board is sometimes referred to as the legislative branch of county government, but an examination of its authority will show that it enjoys very little legislative power. In so far as it can determine policies and levy a tax for carrying out those policies, it may be considered a legislative body. On the other hand, the county board has no police power; it has no ordinance-making power; it has nothing more than a degree of discretion in the exercise of those powers which are conferred upon the county by the state. It is unlike a legislative body in that it expends its own appropriations. Except in California and in individual counties in other states, where "home rule" charters have been granted, the county board can hardly be called a legislative body in the correct sense.

Since the county is primarily an agency of the state, the board of commissioners is primarily engaged in administering those functions which the state imposes upon the county. Its authority is limited to that which the statute

[1] Porter, *County Government and Administration in Iowa*, p. 21.

confers or implies. The board may be called a general public agent by which the powers of the county are exercised. It represents the county in its corporate capacity. It is in this body that the personality of the county is crystallized and therefore in "legal contemplation the board of commissioners is the county."[2]

HISTORICAL BACKGROUND

The County Court:

Prior to 1868 county government in North Carolina was vested in the county court. The Court of Pleas and Quarter Sessions, as it was called, met four times a year and exercised both judicial and administrative functions. As an administrative body it had charge of levying taxes, appropriating the public money, providing the public buildings, caring for the poor, constructing and keeping in repair the public roads and bridges, and other duties of minor importance.

The court was composed of all the justices of the peace of the county, with one of their number as chairman, and any three constituting a quorum for the transaction of business. At the first meeting in the year, they could, at their discretion, elect five of their number, with one as chairman, to hold the courts for the year, and this was generally done. Since the members came from different sections of the county it was a representative body, but it was not a democratic body in that the members were not directly dependent upon the popular vote. The justices were appointed by the governor, upon the recommendation of the General Assembly, to hold office during good behavior, and this made a more or less permanent body. The justices received no pay except a small per diem, but the position was a responsible one, carried a good deal of honor, and usually attracted men of ability and prominence.

Change to Commission Form:

During the Reconstruction period in 1868, a new constitution was adopted, providing for an entirely new system

[2] State *v.* Clark, 4 Indiana 316. Quoted in *County Government and Administration in Iowa*, p. 22.

of county government. A board of five county commissioners, elected by popular vote from the county at large, to serve for a term of two years, became the governing body of the county, and to it was committed most of the administrative duties formerly belonging to the county court. It chose one of its members as chairman, and the register of deeds became the clerk of the board. This constitution also set up a township organization, composed of two justices and a clerk, and known as township trustees. This board had charge of the roads and bridges of the township and could levy and collect taxes for township purposes, subject to the supervision of the county commissoners. There were justices of the peace, as before, but they were elected in each township by popular vote to serve for two years, and had only judicial powers except as members of the township trustees.

This plan was more democratic than administration by the county court, but was so different from what the people had long been accustomed to that it did not give satisfaction.

Justices of the Peace Restored to Power:

The Convention of 1875 gave the legislature the power to change or abrogate the plan of county government at its pleasure. Acting on this authority the next Assembly made important changes. It did not abolish the board of commissioners, but henceforth, instead of being popularly elected, the members were to be chosen by the justices of the peace of the county. The latter, or at least a majority of them, were to "assemble at the courthouse on the first Monday in June, 1884, and every two years thereafter, and proceed to the election of not less than three nor more than five persons from the body of the county, who shall be styled the board of commissioners."[3] The justices were to meet with the commissioners annually on the first Monday in June, or oftener if the commissioners called them. Vacancies in the board of commissioners were to be filled by the justices. The justices were made elective by the General Assembly instead of by popular vote, and certain important duties, like levying taxes or locating public buildings, were

[3] *The Code* (1883), chap XVII, sec. 716.

to be performed by the commissioners with the concurrence of the justices in joint session.

These changes were made in order to rescue the eastern counties from the extravagance and dangers of negro and carpet-bag rule.

The township organization as a separate government was discontinued, except that the township retained a certain jurisdiction over local roads.

Present Plan Adopted:

In 1895 the General Assembly again passed into the control of the "radicals," and they restored the election of commissioners and justices to popular vote and relieved the juctices of any further voice in county administration. The first election was in 1896, and since that date commissioners have been chosen at biennial elections in every county. It was the original idea that the whole administration of county affairs should be in the hands of this central board, but there has been a tendency to divide the duties and responsibilities by the creation of coördinate or subordinate boards or by transferring some of the functions to other organizations.

ORGANIZATION

Membership:

The constitution calls for five commissioners, but this provision is subject to legislative change, hence the general statute provides for three. The exemption of certain counties from this statutory limitation and subsequent public-local enactments explain why there are many counties with more than three commissioners. Forty-five counties have five commissioners each, Hertford and Gaston counties have six each, and Pasquotank has seven. The number in any county may be changed by special act or by referendum at any time. There is no particular importance to be attached to the number of members, so long as it remains a small board, and an increase or decrease has usually had a political origin.

Term and Manner of Election:

Ordinarily the term of a commissioner is two years. A few counties through special acts have given one or more

members a longer term so that there will never be an entirely new board. For instance, in Polk County the candidate receiving the largest vote serves four years. In Richmond County the term is six years, one member retiring every two years. In Vance County no more than three of the five commissioners are elected at one time, so that there are always at least two who hold over. These methods give the board continuity and remove the possibility of having at any time an entirely inexperienced body. The system in use in Polk and Vance would seem to be preferable to the Richmond system, for it enables the voters to secure a change of policy by electing at one time enough new members to constitute a majority.

The General Assembly of 1927 passed an act known as "An Act to Provide Improved Methods of County Government,"[4] and one of the features of the act is the provision for modifying the membership of the county board or the terms of the members without an act of the legislature. The number of commissioners may be increased from three to five or decreased from five to three. The terms of office may be increased from two years, all expiring at the same time, to rotating terms of six years. Either of these modifications may be effected by a favorable vote at an election called in answer to a petition filed by 10 per cent of the voters of the county.

Unless there is a special local enactment to the contrary, the commissioners are elected at large. In Gaston, Wake, and possibly other counties, they are chosen by townships or other districts. As a general proposition the election of the commissioners at large is to be preferred, for then they are not under obligations to particular sections of the county. In counties where there is some contest between a rural and an urban element, there might be a requirement that both elements be represented on the board. While it is desirable that the board be a representative body, it is even more important that every member work for the interest of the whole county rather than for a particular locality.

A vacancy on the board of commissioners is filled by the clerk of superior court.

[4] *Public Laws of 1927*, chap. 91.

Qualifications:

Every elector in North Carolina, except an atheist, is eligible to public office. The only requirement is that he take and subscribe to an oath before entering upon the duties of his office. Commissioners usually take this oath before the clerk of superior court, but it may be taken before any one qualified to administer oaths.

Although any qualified voter may be a candidate for county commissioner, or any other office, the nominations are almost universally made from mature and responsible men. Most of the North Carolina counties have a predominantly rural constituency, and it is not unnatural to find county boards composed of farmers, active and retired, country merchants, and small-town bankers and business men. Only rarely is a professional man elected to the board, and never yet a woman. The large-caliber business man, especially the manufacturer, is not often found on the board, though he is not likely to be unrepresented.

While the members of the county boards may be superior in mentality and training to their constituency, they are not usually much superior. The voters, as a general rule, select men who have been successful in their own businesses. Urban voters are slightly less partisan than rural voters. County commissioners, as a rule, are honest and public-spirited, conservative, limited in social vision, politically shrewd. Sometimes they are thrifty to the point of parsimony, but usually where there is economy in one department of government, there is waste and extravagance in another.

Meetings:

The board of county commissioners meets regularly on the first Monday of each month, continuing the session the next day if necessary. Special meetings may be called by the chairman whenever circumstances warrant it, but the law requires that such meetings be advertised for five days. Most meetings on other days than first Mondays are adjourned meetings. In the larger counties the commissioners may be in session several days each month. Special acts govern in certain counties. The commissioners meet as a board of equalization and review on the second Monday in

July of each year. In those counties where the commissioners are also the members of the highway board they may have a regular time for meeting in that capacity. For instance, in Rutherford County the commissioners meet for three days at the beginning of each month, devoting the first two days to general county business and the third day (Wednesday) to highway matters. It takes them two days to complete county business because so much of the first day is taken up hearing delegations.

The meetings are open to the public, but there are times when the commissioners find it desirable, almost necessary, to go into executive session behind closed doors.

At each regular December meeting the board chooses one of its members as chairman for the ensuing year; in his absence the members present choose a temporary chairman. There is at least one exception to this rule. In Alamance County the county manager is chairman of the board and is elected on that basis. The multiplicity of public-local acts makes it almost impossible to describe a condition in any particular that is true of all the counties. Perhaps there is no exception to the rule that a majority of the board constitutes a quorum.

There is a wide range of difference in the manner in which the meetings are conducted. A good deal depends upon the ability of the chairman as a presiding officer, but perhaps more depends upon the customary courthouse practices. In some counties the board meets and conducts business in a strictly orderly and parliamentary manner. In others, the citizens press into the room and crowd around the tables so closely that there is the greatest confusion. In a properly conducted meeting the petitioners take their seats and wait until the chairman invites them to speak. Then one by one they are given the opportunity to bring their concerns to the attention of the board. In other instances the individuals press into the room, seek out their favorite commissioner, and solicit his aid in their behalf. In the courthouses which have rails setting off the commissioners' tables from the assembly room it is easier to preserve order and expedite business.

Compensation:

There is no standard scale of pay for county commissioners. Changes in compensation were made in no less than fourteen counties at the 1925 session of the legislature. In most counties they receive a per diem and mileage, varying from two dollars to five dollars a day for regular meetings. In a few counties compensation is allowed for special meetings provided they do not exceed a certain number. Mileage is not allowed for special meetings except by special act. In Edgecombe County the commissioners are paid a hundred dollars in lieu of a per diem for the regular meetings and five dollars a day for special or adjourned meetings. In Wilson and Haywood counties the commissioners receive fixed salaries rather than per diems. In Buncombe and Jackson counties all three commissioners are full-time officials with commensurate salaries. In several counties the chairman receives extra compensation, the amount depending upon the amount of time he devotes to county affairs. In Alamance, Craven, Mecklenburg, New Hanover, and several other counties the chairman gives half or more of his time.

In rare instances commissioners refuse to take pay for their services. Candidates for the offices are not interested especially in the financial remuneration; they seek the office because of the prestige which it carries or because of the influence which they can exert on the board. Sometimes a man serves purely from a sense of duty. It is doubtful if an increase in the per diem would result in any better type of men on the board. A better way to attract able men would be to relieve the commissioners of administrative details, giving that work to a county manager, and thus make the board purely a policy-determining body. Capable men, busy with their own affairs, would then be willing to serve on the board of commissioners as they now serve on other boards of directors.

POWERS OF THE COUNTY BOARD

Constitutional and Statutory Limitations:

The constitution declares that "it shall be the duty of the commissioners to exercise a general supervision and con-

trol of the penal and charitable institutions, schools, roads, bridges, levying of taxes and finances of the county, as may be prescribed by law."[5]

But the amendment of 1875 provides that "the General Assembly shall have full power by statute to modify, change, or abrogate any and all of the provisions of this section, and substitute others in their place."[6] Thus the composition and powers of the board of commissioners are subject entirely to legislative control. They have no powers except those which the General Assembly confers upon them and these may be withdrawn at any time.

When the "commissioner plan" of county government was established in North Carolina, it was the intention that the whole administration of county affairs should center in this body, but there has been a tendency to divide the duties and responsibilities by the creation of secondary boards or by transferring certain functions to other agencies. Hence, we find in every county a board of education to which has been transferred the administration of the public schools. Elections have been put in the hands of a county board of elections. Many counties have separate road boards, which have taken over the control of roads and bridges. The county board of public welfare is an independent agency. The county board of health is not entirely independent, for the chairman of the county board of commissioners is a member. The taxing power has been consistently left under the control of the commissioners, and the other boards are dependent upon them for financial support. The board of commissioners has thus come to be primarily the fiscal board of the county and, in addition, exercises such administrative functions as have not been delegated to some other board or agency.

Although a list of the powers of the county commissioners makes a rather imposing array,[7] it must be remembered that these powers are not absolute. It is only a discretionary power which they enjoy, within limits set by the constitution and general statutes and subject to further limitation by special act. With these limitations in

[5] *North Carolina Constitution*, art. VII, sec. 2.
[6] *Ibid.*, art. VII, sec. 14.
[7] *Consolidated Statutes*, 1297.

mind let us enumerate the more important powers of the county board.

Levy Taxes:

The most important powers of the county board are those in connection with taxation and finance. Of course, the raising and disbursing of public funds is always incidental to some other function. It is not an end in itself. A large portion of county revenue is spent for purposes over which the commissioners have no control, that is, services which the state demands that the county provide. These include the operation of the schools for six months, the holding of court, the care of prisoners and dependents, the equipping of county offices, the holding of elections, and so forth. There are relatively few services which a county undertakes to perform of its own volition. The state not only names a large number of functions which the county must support by taxation but it limits the tax which a county may levy to pay for these and other services. Hence the tax-levying power is one over which the commissioners have, after all, only a limited control.

The General Property Tax. County revenue is derived almost entirely from the general property tax. The poll, or capitation tax, and certain privilege and license taxes yield a few thousand dollars a year, and some revenue is derived from fines, fees, and forfeitures, but 90 to 95 per cent of the total income of a county comes from the property tax.

The constitution imposes three restrictions in the use of the property tax:

> All taxes levied by any county, city, town or township shall be uniform and ad valorem upon all property in the same, except property exempted by this Constitution.[8]
>
> The total of the state and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by article nine, section

[8] *North Carolina Constitution*, art. VII, sec. 9.

three, of the Constitution (*six months*): Provided, further, the State tax shall not exceed five cents on the one hundred dollars value of property.[9]

Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.[10]

Since it is the present policy of the state not to levy any property tax for state purposes, the county may levy fifteen cents on each hundred dollars' worth of property before reaching the constitutional maximum—that is, for general county purposes.

The constitutional requirements may be summarized as follows:

For necessary expenses the county commissioners may levy up to fifteen cents on the hundred dollars' valuation of property without a vote of the people or without legislative permission.

For necessary expenses the county commissioners may exceed a fifteen-cent levy by special legislative authority and without a vote of the people unless the legislature chooses to require it.

For other purposes than necessary expenses a tax cannot be levied, either within or in excess of the constitutional limitation, except by a vote of the people under special legislative authority.

The commissioners are required to levy sufficient tax to run the public schools six months, and the constitutional limitation does not prevent such levy.[11] They have some voice in determining what is a sufficient amount of money for this purpose. In case a county, or a subdivision thereof, wishes to operate the schools for a longer period, it is necessary to get legislative sanction permitting the people of the district to hold an election and if the vote is favorable impose a special tax upon themselves.[12]

It is the function of the court to determine what are *necessary expenses*, but the court cannot control the discretion

[9] *Ibid.*, art. V, sec. 6. [10] *Ibid.*, art. V, sec. 7.
[11] Collie *v.* Commissioners, 145 N. C. 170.
[12] Hill *v.* Lenoir County, 176 N. C. 572.

of the commissioners in incurring a debt when the expense is necessary.[13] The court has held that building and maintaining highways is a necessary expense.[14] This does not preclude the right of the legislature in its enactment to demand a vote of the people when a special road levy is contemplated. Whenever any large outlay of money is required, even for a necessary expense, the legislature usually requires that the issue be submitted to the people. This is done both because it is in keeping with the spirit of democratic government, and to forestall litigation in case a question should arise as to whether or not it was a necessary expense.

The legislature has full power to compel the county commissioners to levy taxes to the constitutional limit to pay the necessary expenses of the county.[15] This is rarely necessary, for it is difficult for a county to meet the necessary expenses of the general fund with a fifteen-cent levy, to say nothing of road expenses. Had the importance of road building and the heavy expense which it entails been anticipated when the constitutional amendment was passed, probably the limit would not have been set so low. With a fifteen-cent limitation it is necessary for the county to go to the legislature for a special act before any substantial road project can be undertaken.

It is entirely proper for the state to exert some restraining influence over the taxing and debt-incurring power of a county, but with hundreds of these applications coming before each session of the legislature it is impossible for every one to receive careful scrutiny. Usually a local bill is left to the judgment of the representative from the county concerned, so that virtually the tax-levying authority in a county becomes not the county commissioners but the representative in the General Assembly. The legislative control, instead of being a means of protecting the taxpayers from the extravagance of the commissioners, has sometimes been a means of burdening the taxpayers in spite of the thrift of the commissioners.

The Poll Tax. The constitution provides that:

[13] Vaughn *v.* Commissioners, 117 N. C. 429.
[14] Board of Trustees *v.* Webb, 155 N. C. 388.
[15] Tate *v.* Commissioners, 122 N. C. 812.

The General Assembly may levy a capitation tax on every male inhabitant of the State over twenty-one and under fifty years of age, which said tax shall not exceed two dollars, and cities and towns may levy a capitation tax which shall not exceed one dollar. No other capitation tax shall be levied. The commissioners of the several counties and of the cities and towns may exempt from the capitation tax any special cases on account of poverty or infirmity.[16]

The proceeds of the state and county capitation tax shall be applied to the purposes of education and the support of the poor, but in no one year shall more than twenty-five per cent thereof be appropriated to the latter purpose.[17]

This constitutional provision hardly needs any explanation. Since the schools are supported by the county and poor relief is also a county charge, the whole two dollars stays in the county, a dollar and a half going to the school fund and fifty cents into the general fund for poor relief. Prior to 1917 there was a constitutional equation between the property tax and the poll tax, the latter being equal to the tax on three hundred dollars' worth of property but not to exceed two dollars. This meant, of course, that the levy on property by the state and county could not exceed 66⅔ cents. Since some counties issued bonds while this equation was in force and these bonds are not yet fully retired, the poll tax in such counties exceeds two dollars by the amount which it is necessary to levy to retire these old bonds.[18]

The commissioners are sole judges as to who shall be excused from the poll tax because of poverty or infirmity.

Supervise Assessing and Listing of Taxables:

The whole machinery of taxation will be described and analyzed in a later chapter; so in this connection it is necessary only to point out the fact that the commissioners are charged with the responsibility of getting the taxables on the tax roll. The statutes call for a quadrennial assessment of real property, and every fourth year the board of commissioners of each county appoints a resident freeholder as county supervisor.[19] The county supervisor has general

[16] *North Carolina Constitution*, art. V, sec. 1. [17] *Ibid.*, art. V, sec. 2.
[18] Hammond *v.* McRae, 182 N. C. 754.
[19] *Machinery Act, 1927*, secs. 100-107. (In *Public Laws of 1927*, chap. 71.)

supervision of the assessment of all real property in his respective county. He, usually with the advice and consent of the commissioners, appoints one or more assistants for each township. These township assessors visit and assess all of the real and personal property of their respective districts. The county supervisor has general oversight of the work and is supposed to assist the township assessors in every possible way. Of course, the final responsibility rests with the commissioners, and it is to their advantage to appoint the best man available as county supervisor. In those counties which have an auditor, tax clerk, or other similar official, such officer may be the county supervisor. In those counties where by special act the chairman of the board of county commissioners has been made an all-time chairman he may serve as county supervisor. The experience of the counties has been that only when the county tax supervisor is a full-time official, with or without other duties, can the work be done satisfactorily. Rarely can a capable man be found who will accept a sixty-day appointment. Furthermore, a tax roll is something which demands constant revision, and there ought to be some one charged with this work throughout the year.

In the years when there is no reassessment of real property the township assistants are known as list-takers; they do not have to visit the property but simply meet the taxpayers at convenient points in the township and help them list their taxables. The assessors and list-takers, the county supervisor, and the chairman of the board of county commissioners have power to examine witnesses and administer oaths in connection with the listing of taxables. The commissioners have the right to insert in the tax list any property which was not given in by the owner.

Serve as a County Board of Equalization:

On the second Monday in July of each year, and legally at no other time, the board of county commissioners meets as a board of equalization.[20] It may adjourn from day to day until the work is completed. It is the duty of this board to equalize the valuations on land and personal property so

[20] *Ibid.*, secs. 50 and 108.

that all property shall be on the tax books at its true value in money. It is needless to say that this ideal is never realized, but some attempt is made to secure uniform valuations. In some counties the valuations are comparatively high, approaching the true money value, but in other counties a 50 or 60 per cent standard prevails. It is illegal for the board of equalization to increase or diminish the assessed value of any lands, except in the year in which the land is valued for taxation, unless the property has been affected by some extraordinary circumstance, the fact in connection with which shall be found by the board in each case.

It is sometimes desirable for the board of equalization to equalize also between townships, making horizontal increases or decreases affecting an entire township. This is justified on the ground that the several township assessors may, consciously or unconsciously, use different standards of valuation. The juggling of township valuations in the name of equalization offers a tempting opportunity for mischief. On the other hand, unless there is equalization, care must be taken to select assessors who will not be influenced by local prejudice or attachment.

Make Contracts and Audit Claims:

The commissioners are authorized to make all contracts for carrying on the business of the county, except that the legislature may restrict the contract power by limiting the amount or by requiring the matter to be submitted to a vote of the people. Ordinarily, when the amount is small, is for a necessary purpose, and is to be paid promptly, no such restrictions are imposed. While the commissioners are expected to exercise their judgment in entering into contracts, they are not personally liable if they make a bad deal. Sometimes a special act requires that no contracts involving more than a certain sum, say five hundred or a thousand dollars, can be entered into without advertising for and receiving sealed bids.

Prior to the enactment of the county fiscal control act, providing for a county accountant in each courthouse, the auditing power of the county commissioners was an im-

portant power. Even yet many boards pass on every claim presented against the county before vouchers are issued.

The county board may authorize its agents to expend county money, but no bills can be paid from the general fund until audited by the commissioners. Expenditures of the school board are not audited by the commissioners item by item, but they do have to approve the budget. In some counties they do not audit expenditures of the highway board, a phase of control which probably ought not to be omitted. The auditing power of the county commissioners is a very important one, but it is not always surrounded with sufficient safeguards. Sometimes the commissioners are called upon to audit at one sitting a hundred or more claims, some of which have not been verified. In a few counties there is centralized buying through a purchasing agent, but in most counties each officer buys his own supplies and turns in the bills. Only when the commissioners exercise both contracting and auditing powers can their control be really effective.

Incur Indebtedness:

The board of county commissioners has the right and power to borrow money for the necessary expenses of the county, and to provide for its payment, with interest, by taxation. In case the amount is small and the principal and interest can be paid without exceeding the constitutional limit of taxation, no legislative sanction is required, or at least not ordinarily. The county may contract a debt for necessary expenses and exceed the limitation on taxation with the approval of the General Assembly, with or without a vote of the people, as the General Assembly may determine. In case the General Assembly does require the question of incurring the debt to be submitted to a vote, it amounts to a statutory restriction, and the indebtedness cannot be incurred unless approved by the people according to the provisions of the statute.[21] If it is a question, however, involving a *necessary expense*, a majority of the votes cast shall be considered sufficient to carry the election.[22]

[21] Guire *v.* Commissioners, 177 N. C. 516.
[22] Woodall *v.* Highway Com., 176 N. C. 377.

The commissioners may not incur a debt for other than necessary expenses without a favorable vote of the people, and in this case it must be a majority of the qualified voters, not merely a majority of the votes cast. The constitutional provision reads:

> No county . . . shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein.[23]

Whenever a popular referendum on the question of a bond issue is to take place, it is the duty of the commissioners to set the date of the election, see that the election is conducted properly, and see that the mandate of the people is carried into effect. In no case is an election valid unless it has been advertised for at least a month.

The power to incur a debt for necessary expenses implies the power to borrow money for payment, unless restricted by the legislature.[24] It is also a general rule that where a body is authorized to contract a debt, it is implied that the usual evidence or security may be given. Thus the commissioners may exchange bonds for outstanding notes if the holders of the notes are willing to make such an exchange. The commissioners may fund a debt contracted for necessary expenses and issue bonds without a vote of the people.[25] They cannot often do so, however, without a legislative act authorizing it, for rarely can a bond issue be retired without involving a tax in excess of the constitutional limit.

When the legislature authorizes and empowers the commissioners of a county to issue bonds with which to pay indebtedness, such authority is construed to be mandatory.[26] In fact, the General Assembly has the power to compel a county to issue bonds to fund an existing indebtedness incurred for necessary expenses.[27] Furthermore, the legislature has the power, if it chooses to exercise it, to limit the commissioners in contracting a debt, even for necessary

[23] *North Carolina Constitution*, art. VII, sec. 7.
[24] Bennett *v.* Commissioners, 173 N. C. 625.
[25] McCless *v.* Meekins, 117 N. C. 35.
[26] Jones *v.* Commissioners, 137 N. C. 579.
[27] *Ibid.*

expenses.[28] The limitation may be either specific or general.[29] On the other hand, the General Assembly may by special act permit an individual county to exceed a debt limitation of general application.

The commissioners may purchase, if they desire, at any price not exceeding their par value and accumulated interest, any of the outstanding bonds or other indebtedness of the county.

As already pointed out, the constitution makes a distinction between *necessary expenses* and expenses which are *not necessary*. It is within the province of the court to determine what are *necessary expenses*. One jurist has said the necessary expenses of a county "involve and include the support of the aged and infirm, the laying out and repair of public highways, the construction of bridges, the maintenance of the public peace and administration of public justice—expenses to enable the county to carry on the work for which it was organized and given a portion of the state's sovereignty."[30] The administration of justice necessitates a courthouse and a jail, and the court has repeatedly ruled that the building of a courthouse or a jail is a necessary county expense. Nevertheless, the commissioners may exercise their discretion as to whether existing buildings are adequate. The expense involved in operating the schools for more than the six months' term is not a necessary expense, according to the rulings of the Supreme Court of the state.

The County as a Debtor. The commissioners have the right, and it is presumed to be their duty, to provide by taxation or otherwise for the prompt and regular payment, with interest, of any existing debt owing by the county. Here, again, the constitutional limit cannot be exceeded except by legislative sanction.

It is entirely legal for a county to assume and pay the interest and principal on township road improvement bonds. Since a road anywhere in the county is now of service to all the people of the county, it is fair, and increasingly

[28] Burgin *v.* Smith, 151 N. C. 561.

[29] For present statutory limitation see "County Finance Act" (*Public Laws of 1927*, chap. 81). See page 172 of this book.

[30] Jones *v.* Commissioners, 137 N. C. 598.

the custom, for the county to take over such township indebtedness.

Ordinarily, the only remedy of a judgment creditor against a county is a writ of *mandamus* to compel the commissioners of the county to levy the tax to pay the debt. This is the creditor's only recourse because "he can not seize the revenue of the county, or levy upon or sell property essential or useful for corporate purposes without putting in jeopardy the very existence of the corporation, and the presumption is, in the absence of specific information, that the corporation holds no property not used or needed for public purposes, and has no means of meeting its indebtedness except out of the excess of its revenues over its necessary current expenses."[31]

Control County Property:

Since the commissioners act for the county in its corporate capacity, they have control over all property belonging to the county, and may make such orders respecting it as may be deemed expedient. The board may purchase real property as sites for county buildings or for other purposes. It may be secured through condemnation proceedings if necessary, or it may be purchased at an execution sale to secure a debt due the county. It is assumed that the commissioners hold county property as trustees and can acquire and hold property only for necessary public purposes and for the benefit of all the citizens.[32] This includes the right to purchase or lease a county farm, which may be used as a home for dependents, as a place for working prisoners, as an agricultural demonstration farm, or for a combination of these purposes. It is the duty of the commissioners to keep county property in repair, and ordinarily it is wise to have it insured.

The board of commissioners may sell or lease any real property of the county and make deeds or leases for the same. The power to sell does not include the power to mortgage.[33]

The machinery, tools, and other personal property of a

[31] Hughes *v.* Commissioners, 107 N. C. 605.
[32] *Ibid.*, 598.
[33] Vaughn *v.* Commissioners, 118 N. C. 636.

county are often lost or wasted because there is no one charged with the responsibility of looking after them. Rarely is there any adequate provision made for collecting the machinery in convenient centers for housing. It is not uncommon to find road machinery standing out in the weather in various parts of the county. With no regular or systematic inventory, tools, furniture, stationery, and food supplies may be stolen and the loss never detected.

The commissioners should appoint one of their number, or some one else, as custodian of county property and institute some thoroughness in this regard.

Erect and Repair County Buildings. It is the duty of the commissioners to erect and keep in repair the necessary county buildings, and to raise by taxation the moneys therefor. The court has held that the cost of building a courthouse and jail is a necessary county expense, but that it is within the discretion of the commissioners whether an existing building shall be repaired or a new one built.[34] The dimensions and cost of a new building are discretionary with the commissioners, except that the legislature may impose a restriction, which must be observed. In the absence of a special act the commissioners are free to act within the limits set by the constitution and general laws. But where the legislature has interposed its will and prescribed the limit of expenditure or made other specifications or restrictions, the commissioners cannot disregard these instructions. "The Legislature of the State—that power which made at its pleasure and can unmake at its will, the county itself—can interpose its will; and when it does so its will is supreme and must be obeyed."[35]

To build and keep in repair the necessary county buildings is a part of the ministerial duties of the county commissioners, and they are subject to indictment by the grand jury for the willful failure to perform these duties. The commissioners are individually responsible, but they are entitled to set up their defenses and have the facts as to the charge and the defense found by a jury. As individuals, they may be called upon to answer criminally for a breach of duty, on

[34] Jackson *v.* Commissioners, 171 N. C. 382.
[35] Burgin *v.* Smith, 151 N. C. 568.

the charge of the grand jury, which speaks for the whole people, but not to a civil action by one or more citizens.[36]

The county is not liable for the negligence of its officials. Neither can the court issue a *mandamus* compelling the county commissioners to repair or build a courthouse or jail. A *mandamus* may compel only the performance of a specific act pointed out by statute. Justice Clark has wisely said, "If a county does not have an adequate courthouse, the remedy (other than the indictment of the county commissioners for neglect of duty) is an appeal to the better judgment of the county authorities or by arousing the sound public opinion of a self-governing people, and not by application to the courts."[37]

Designate Sites for County Buildings. It is within the power of the commissioners to remove or designate a new site for any county building; but the site of any county building already located shall not be changed, unless by a unanimous vote of all the members of the board at the regular December meeting, and unless upon notice of the proposed change, specifying the new site. Such notice shall be published, or posted conspicuously, for three months next preceding the annual meeting at which the final vote on the proposed change is to be taken. Such new site shall not be more than one mile distant from the old, except upon the special approval of the General Assembly.[38]

Encourage the Building of Better Courthouses. In 1923 a supplementary act was passed by the General Assembly specifically authorizing the boards of commissioners of the various counties throughout the state "to issue bonds or notes for the purpose of borrowing money with which to erect, build, construct, alter, repair and improve courthouses and jails, and to purchase the necessary equipment and furniture to be used therein." The significant features of the act are: (1) Bonds issued for these purposes shall be serial bonds, payable in not less than five nor more than thirty years from the date of issue; (2) Notes issued for these purposes, unless payable within one year, shall be payable in five substantially equal annual installments; (3) The amount

[36] Ward *v.* Commissioners, 146 N. C. 535.
[37] *Ibid.*, 538.
[38] *Public Laws of 1925*, chap. 229.

of bonds or notes so issued shall not exceed one per cent of the assessed valuation of the property in the county; (4) The board of commissioners may, in its discretion, before issuing the bonds or notes submit the question of issuing the same to a vote of the people of the county; (5) The proceeds from the sale of such notes or bonds shall be used exclusively for the purpose avowed and to defray the expenses incidental to the election and the sale of the bonds; (6) Any bonds so issued shall not bear a rate of interest in excess of 6 per cent, nor shall they be sold for less than par and accrued interest.[39]

Construct and Maintain Public Roads:

The construction and maintenance of public roads and bridges are matters which normally come within the power of the county commissioners, but in only about half of the counties do the commissioners exercise this control at present. In 1917 the General Assembly provided for the creation of a county road commission in every county, but the act permitted the board of county commissioners to serve also as the road board in those counties which did not favor a second board. Since nearly half of the counties now have separate road boards, and others have had at one time or another, it has seemed best to reserve the discussion of road matters until a later chapter. It is sufficient in this connection to mention that in many counties the county commissioners have entire control over road matters.

Raise Money for Highways. Since the special road boards have no power to levy taxes, it has remained the duty of the county board to raise by taxation the necessary highway moneys. This duty is obligatory, for the construction and upkeep of highways has been declared a necessary expense. When a special road fund is set up the general fund is not drawn upon for road purposes.

Construct and Repair Bridges. If there is a separate highway commission the construction and repair of bridges are usually included among its duties. Otherwise the responsibility belongs to the county commissioners.

When a bridge is needed over a stream which divides one

[39] *Public Laws of 1923*, chap. 143, Amended Extra Session 1924, chap. 113.

county from another, the bridge must be authorized by the commissioners of both counties and the expense defrayed by the two counties in proportion to the number of taxable polls in each. The fact that the middle of the stream is the boundary does not change the apportionment of expense. In case one county refuses to join in the construction, the other county cannot go ahead and build the bridge, even at its own expense, without an enabling act from the legislature.[40]

The commissioners alone determine the necessity for the construction and repair of bridges, and they cannot delegate this power. That is, bridge work can be authorized only by the board as a body. The court will not interfere with the exercise of discretion on the part of the commissioners, unless that power is abused. A county is not liable in damages for an injury resulting from a defective bridge,[41] nor are the commissioners personally liable unless they act corruptly or through malice.[42]

Open Rivers and Streams. The county board may appoint a commissioner to open and clear the rivers and creeks within the county, or where a stream forms a county line or a part thereof. If the county employs an engineer, this work may be delegated to him.

Grant Right to Bridge Navigable Streams. The county commissioners, subject to the approval and permission of the United States War Department, may grant to a party owning land on both sides of a stream lying wholly within the county, the right to construct and maintain a bridge across such navigable stream, provided the application for such privilege was properly and sufficiently advertised and no protests were registered.

[40] In 1898 the commissioners of Yancey County, deeming a public bridge necessary across the Toe River, the dividing line between Yancey and Mitchell counties, applied to the commissioners of Mitchell County to join them in the construction. The latter refused, on the ground that it would serve only a few citizens of Mitchell County; so the commissioners of Yancey County contracted to build the bridge at the expense of Yancey alone. It was to be an iron bridge and the cost was $4,000. The bridge was built by the contractor and accepted by the commissioners, but certain taxpayers asked the Court to enjoin the payment of the warrants on the ground that they were invalid. The Court concurred in this opinion and issued the injunction, thus depriving the contractor of his pay. It is possible that the legislature later validated the warrants. See McPeeters *v.* Blankenship, 123 N. C. 651.

[41] White *v.* Commissioners, 90 N. C. 437.

[42] Hipp *v.* Ferrall, 173 N. C. 167.

Provide for Dependents and Defectives:

A modern conception of the functions of government includes the care and support of dependent and defective citizens. It has generally been regarded as the function of the states to provide institutions for the subnormal and abnormal classes, such as the feeble-minded, the insane, the deaf and dumb, and the blind. The states also have assumed responsibility for the care of felons and the more dangerous type of criminals. The state and local governments have coöperated in the care of vagrants, prostitutes, and juvenile delinquents. It has remained the duty of the local governments, principally the county, to administer relief to the indigent.

In North Carolina the county commissioners are required to provide by taxation for the maintenance, comfort, and well-ordering of the poor. In general, poor relief is administered through the county home and through outdoor relief. The county does not have to support those who have not established a legal residence in the county. The commissioners may institute proceedings by the warrant of the chairman against any person coming into the county who is likely to become a public charge and cause his removal to the county where he was last legally settled.[43]

The County Home. Practically all the counties maintain a county home with a farm in connection with it. The commissioners exercise control over it by appointing a superintendent and matron, by making the necessary rules for the government of the institution, and by purchasing, or by directing the purchase of, the necessary equipment and supplies. No one may be admitted to the county home except upon an order issued by the commissioners. Most of the occupants of the county home are old people who have no immediate relatives or friends to care for them. The only other type of inmate which is common is the person with too little mentality to direct his own life.

Outdoor Relief. Every county grants hundreds of dollars a year in outdoor relief. Those people who still have a home but lack a sufficient income to live without suffering are granted a small monthly allowance from the county treas-

[43] *Consolidated Statutes*, 1335 to 1343.

ury. There is no doubt that some of this money is wasted, but perhaps no more is wasted than it would cost to employ a person to buy the supplies and deliver them systematically. Occasionally the commissioners do furnish supplies instead of cash, but in most cases the allowance is not large enough to permit a very wide margin of waste. In the case of widowed mothers, who are dependent, the state duplicates the amount furnished by the county. The board of commissioners must see to it that no children within the school age are kept out of school because of poverty. All paupers must be given a respectable burial.

Hospitals and Sanatoria. The commissioners may establish public hospitals, tuberculosis dispensaries or sanatoria, homes for indigent orphan children, or other institutions in the interest of health or welfare, and provide by taxation for their support. Ordinarily the state contributes to the support of all health agencies and activities. While the county board of health may foster the establishment of a county hospital or a county health department the commissioners have the final voice in the matter. This is perfectly proper, for they alone have the taxing power.

Promote Public Welfare:

Whenever it is deemed expedient, the board of commissioners may provide for the erection of a house of correction, where vagrants and persons guilty of misdemeanors may be restrained and usefully employed. The commissioners regulate the employment of labor in these institutions, appoint superintendents and attendants, and fix their compensation. The counties of this state are particularly lacking in institutions for juvenile delinquents. The state institutions are all filled to capacity. Several counties have built cottages at the Jackson Training School so that boys committed from these counties may be assured of admission. Mecklenburg and Buncombe counties have built county institutions for wayward women.

The board of commissioners meets biennially with the county board of education and elects a superintendent of public welfare.[44] In counties with less than 32,000 popula-

[44] *Public Laws of 1921*, chap. 128.

JOHNSTON COUNTY HOME

ORANGE COUNTY HOME

tion the county superintendent of schools sometimes serves as superintendent of public welfare, though he does not have the time to give the work the attention which it deserves. A capable, alert superintendent of public welfare can be of inestimable service to the commissioners and to the county.

Provide for Employment of Prisoners:

The commissioners have a right to provide for the employment on the highways or public works in the county of all persons condemned to imprisonment with hard labor, and not sent to the penitentiary. Many of the larger counties have operated the so-called chain gangs in connection with highway construction, but these are sometimes neither humane nor profitable. In the counties which do not have enough prisoners to warrant a chain gang, arrangements may sometimes be made to send the convicts to the chain-gangs of other counties. The problem of providing employment for prisoners will be discussed further in a subsequent chapter.

Divide the County into Townships:

The Constitution of 1868 made it the duty of the board of county commissioners to divide the county into townships and determine the boundaries and prescribe the names thereof. Although the township organization of local government was soon abandoned, the townships were retained as geographical units. Therefore the commissioners still have the right to erect, divide, change the names of, or alter townships upon application of three interested citizens, and after the proposed change has been advertised as prescribed by law. No township may exercise any corporate powers whatsoever unless authorized by an act of the General Assembly[45] and exercised under the supervision of the board of commissioners.

Miscellaneous Powers and Duties:

The county board enjoys many other powers and is responsible for the performance of many other duties which can be given only a word of mention here.

[45] Graves *v.* Commissioners, 135 N. C. 55.

The board may, in its discretion, appropriate a sum of money to the various organizations of the National Guard.

It may pay the traveling expenses of Confederate veterans to their encampments and reunions.

It may appropriate a sum of money to assist the county-seat town in a public improvement.

It may contract with public libraries for county library service, or may establish a county library.

It may coöperate with the state and national departments of agriculture in promoting farm and home demonstration work, and make appropriations therefor.

The commissioners may procure for each county sealed weights and measures, according to the standard prescribed by Congress; and elect a standard keeper, who shall qualify before the board and give bond approved by the board, as prescribed by law.

The board may employ certified public accountants to audit the books of the several county officers.

The board may demand periodic reports from the other county officers, and it is its duty to make annual settlements and a final settlement with the other fiscal officers.

The chairman of the board may issue subpoenas to compel the attendance before the board of persons, and the production of books and papers relating to the affairs of the county, for the purpose of examination on any matter within the jurisdiction of the board. The chairman of the board, or any member acting as chairman, may administer oaths in this connection.

This survey of the functions, powers, duties, and responsibilities of the county board is not complete. There are numerous situations which arise in the transaction of county business when the commissioners are called upon to exercise their discretion in matters affecting the county. The board represents the county in its corporate capacity and acts for it. In addition to the expressed powers there are other powers implied. Pretentious as this list of powers appears, the powers of the board are less than they once were because of the creation of coördinate boards. Furthermore, the board of county commissioners lacks those vital powers necessary to make its will effective. This can be illustrated

best by showing the relation of the commissioners to the other county officers.

RELATION OF THE BOARD TO OTHER COUNTY OFFICERS

Supervisory Powers:

In theory the board of commissioners constitutes the chief authority and the administrative head of the county. Actually its control is neither complete nor final. Nevertheless, it has numerous contacts with the other officers, and the statutes give it certain supervisory powers.

Induct into Office. To begin with, the board qualifies and inducts into office the clerk of the superior court, sheriff, coroner, treasurer, register of deeds, surveyor, and constable. It takes and passes on the official bonds of these officers and causes them to be registered in the office of the register of deeds. The original bonds are, for safe keeping, deposited with the clerk of the superior court, except the bond of the clerk himself, which is deposited in the register's office. If the board declares the official bond of any officer to be insufficient or declines to receive the same, the officer may appeal to the judge of the superior court. The judge may require the commissioners to accept the bond, or he may require the appellant to file before him additional bond. If, in the opinion of the judge, both the original and the additional bonds are insufficient, he declares the office vacant and notifies the commissioners accordingly. The clerk of superior court fills the vacancy, unless it be the clerk's office which is declared vacant, in which case the vacancy is filled by the resident judge. In the matter of accepting or refusing to accept bonds the judgment of the superior court judge is final. The appeal, the finding, and the judgment must be recorded on the minutes of the board of commissioners.

Fill Vacancies. The commissioners may fill by appointment a vacancy in the offices of sheriff, constable, coroner, register of deeds, county treasurer, or county surveyor, except when the vacancy occurs and is filled in the manner described in the preceding paragraph.

Require Officers to Report. The commissioners may require from any county officer or other person employed and paid by the county, a report under oath at any time on any

matters connected with his duties. Certain officers, such as the clerk of superior court and sheriff, are required to make an annual report.[46] Since the other elective officers have the same political status as the commissioners, it is not easy to enforce this provision. The commissioners do not have the power of removal. The only way in which an official may be removed for neglect of his duties or abuse of his powers is by conviction in the superior court, a difficult and unpleasant procedure which is rarely resorted to. Sometimes officials keep within the letter of the law by filing reports, but the reports are so incomplete and unintelligible as to render them useless.

These provisions, together with certain others such as furnishing supplies, clerical assistance, and courthouse privileges, are intended to give the commissioners general supervision and control over the other officers of the county. It is, however, little more than control by courtesy so far as the other elective officers are concerned.

Control over Appointed Officers:

There are, however, a number of county officers, or employees, who are appointed by the board. These include the county attorney, the county tax supervisor, the assessors and list-takers (with the approval of the county supervisor), the county physician, the superintendent of the county home, the farm demonstrator, the home demonstrator, the auditor (in some counties), the treasurer (in some counties), and unless there is a separate road commission the county board appoints all road officials, including an engineer. The county commissioners and the board of education in joint session appoint a superintendent of public welfare. If there are special institutions, such as houses of correction or public hospitals, the commissioners choose the superintendents. The commissioners appoint registrars of vital statistics, and sometimes rural police officers. Unless the legislative act creating one or another of these offices fixes the compensation and tenure, the commissioners have that authority.

Over their own appointees the commissioners can exert real control. They can fix their duties and see that they

[46] *Consolidated Statutes*, 1326.

are discharged. If an officer proves incompetent or unreliable he can be removed without formal or cumbersome proceedings. There is direct responsibility and control, with the result that the plans and program of the board can be executed without delay or friction. Of course, there is no guarantee that the commissioners will always display wisdom and courage in their appointments. Sometimes favoritism or political prejudice enters into an appointment, but if the commissioners make unworthy appointments, the responsibility rests upon the commissioners and cannot be shifted.

Limited Control over Elected Officials:

Except in a limited way the commissioners cannot regulate or control the activities of the other elective officers. Even though the statutes may demand that they render reports there is no easy way to compel it. Even though there may be coöperation through courtesy, there is no real coördination. The sheriff, the clerk of superior court, the register of deeds, usually the treasurer, and sometimes the auditor, are elected directly by the people and responsible only to the people. Each office is a separate entity and occupies the same status politically as the board itself. Actually a county has no responsible executive head. The commissioners are only nominally the head of the county. They cannot be held responsible for the actions of these other officers whom they did not select and have no means to control. The long ballot defeats good government just as certainly in county government as it has in state and municipal government. Fortunately, North Carolina counties have a shorter ballot than the counties of most other states. But even in North Carolina there is a degree of decentralization in county government which makes efficiency impossible and popular control exceedingly difficult.

In general, the board of commissioners obtains periodic settlements with these officers in regard to finances, requires and receives reports after a fashion, makes appropriations to carry on the work of the several offices, approves bonds, furnishes supplies, and allows expenses. In those counties where the officers are on salary, the board requires a monthly

report of fees collected. To the extent that the other officers are trustworthy and coöperative, there may be complete harmony in the courthouse, but if an officer becomes recalcitrant there is no way to restrain him. The county has no authoritative head. In those counties which have an auditor who is always on duty as the agent of the board, it is easier to introduce efficiency into courthouse practices, but even the auditor, with generous powers conferred upon him by statute, can exert no final control over the elective officers.

THE COUNTY BOARD AT WORK

The Meeting Place:

Even though the final authority of the county board is limited, too limited for effective control, the board has many and very important duties. The raising and spending of several hundred thousand dollars a year imposes a heavy responsibility upon the members and calls for men of sound judgment.

The commissioners meet regularly on "first Mondays" at the courthouse, and it is not uncommon for several hundred people to come to the county seat on those days. Some have business with the commissioners, some come to listen to the proceedings, but most of them come just to "see the folks" and get the news. If it happens to be court week, too, the number is doubled or quadrupled. Democracy ought to thrive in the South, for the courthouse is the common rendezvous of the farmers.

In the newer and more commodious courthouses there is a room set aside and especially arranged for the sessions of the board. At one end of the room is a raised platform set off by a rail or balustrade, and here the commissioners meet around a long table. The rest of the room is filled with seats to accommodate the spectators and those who have business with the board. This arrangement gives the commissioners an opportunity to work with comfort and dispatch. In most of the courthouses, however, the board has to meet in one of the other offices, usually that of the register of deeds. There is no rail to hold the people back and they crowd into the room and press about the commissioners' table so closely that there is the greatest confusion. It is

only the most adroit chairman who can maintain order under such conditions.

The Commissioners' Meeting:

The early part of the day, and sometimes nearly all day, is taken up hearing delegations or individual petitioners. They come with all sorts of requests, pertinent and impertinent. One commissioner was heard to remark, "This body ought to be called a bureau of complaint."

The following is a description of a typical meeting of the better sort. In this county the chairman is a capable business man and a good presiding officer. He is mild and courteous but keeps business moving. In this county it is the custom to have the county attorney meet with the board regularly to advise on points of law. There is a young woman who acts as clerk to the board.

The commissioners assembled about ten o'clock. There were no delegations on this particular day but there were numerous individual petitioners. Most of them were seeking pauper relief or a release from a portion of their taxes. One man asked for a release from a special school tax; he said he lived outside the district. One old negro wanted a release from his poll tax. He did not know his age but was sure he was past fifty. Another wanted his poll released because he had a crippled foot. All of these releases were granted.

Another man was disposed to buy a piece of property being sold for taxes if he could be relieved of the personal tax and the poll. The attorney ruled that he would have to pay the tax on the personal property but the poll could be released. Two or three came in to complain that their valuations were too high, but in only one case would the commissioners listen to the complaint because they had sat as a board of review on a special day. The one exception was that of a man whose case had been carried over from a previous meeting. The chairman agreed to take it up with the township assessor.

A woman, whose husband had been sent to the penitentiary, came in asking for shoes and clothing for her four children. All were barefooted and without sufficient clothes to go to school. The board wrote an order to a local merchant to provide them with shoes but decided to interest the women of the churches in securing second-hand clothing for them. There were several other appli-

cations for poor relief, often when there were near relatives. Two pauper burials were allowed even though one of the deceased had a son and the other a brother-in-law.

One old man wanted pay for sheep killed by dogs. This was the third month he had reported sheep killed. Another man urged the building of a certain road, saying he had paid road taxes all his life but did not have a passable road by his house. The superintendent of schools reported the result of a special school election. A deputy sheriff wanted $56 for helping the sheriff during court week.

The chairman of the board of public welfare reported on several delinquent boys and girls whom he had been trying to aid. He reported that there were thirty or forty juvenile delinquents in the county, many of them orphans, and there was no place to put them. There was also some discussion in regard to an incorrigible woman who had been taken from the jail to the county home but was proving troublesome there.

About 2:30 in the afternoon the commissioners locked the door and went into executive session. Their purpose was to present the financial status of the sheriff who was several thousand dollars behind. It was decided that it would be a violation of their trust as well as a violation of the law to give him the tax books for the current year unless he could make settlement for the previous year.[47]

This meeting was conducted with order and dispatch. There were never more than two or three spectators or petitioners in the room at a time. All five commissioners participated in the debates, although some much more than others. The chairman, who receives extra pay to represent the board and transact routine business during the month, was plainly carrying in large part the burden and responsibility of the board.

Now let us describe briefly a board meeting in another county.

There are three commissioners, all farmers—men of good judgment but limited education. The chairman is a man seventy years of age, unlettered but alert, aggressive and, to a certain degree, autocratic.

[47] County Government Studies, Department of Rural Social-Economics, University of North Carolina.

The meeting was very disorderly. Rarely were all three members at the table at once. One was waiting on one petitioner, another on another. Most of the petitioners wanted poor relief, tax releases or payment of a claim. The room was filled with people all talking at once. They crowded close upon the elbows of the commissioners. On the floor before the fireplace sat a man with both legs gone. Most of the men were coarse, unshaven, and roughly clad. The odor in the room was offensive.

As soon as a man got his warrant (or claim) he went into the register's office adjoining, and exchanged it for a voucher. The register, who is supposed to be clerk to the board, was kept busy in his own office all day. One of the commissioners took down the minutes of the meeting in a scrap docket for the register to write up later. No important business was transacted except to make several tax adjustments, grant poor relief to several applicants, and audit a large number of claims. The meeting lacked all semblance of order or parliamentary procedure. Frequently the chairman would take a petitioner by the arm and go outside to talk to him.[48]

Many of the items brought before the board can not be acted upon at once, or at least ought not to be. Claims are presented for payment about which the board has no knowledge. Some one comes in asking for a reduction in his assessment; another asks for poor relief; another wants the privilege to repair a certain bridge. Every such matter demands preliminary investigation, but the commissioners cannot afford to make these investigations, and they have no one to act for them. Many times, contrary to their better judgment, they act on these matters without sufficient information. At other times they make one of their number a special committee to investigate before the next meeting. A very important part of the work of administration is that done by the individual commissioners outside the regular meetings. At informal meetings or over the telephone the commissioners may make some of their most important decisions. In this case formal action is taken at the next regular meeting and the record made in the minute docket.

In those counties where there is an auditor, much of the preliminary investigation can be conducted by him. Claims

[48] *Ibid.*

are presented to him, and he verifies them before presenting them to the board. In some counties the auditor will not present a claim that reached his hands later than the 25th of the preceding month. Furthermore, the auditor is often the purchasing agent for the county, and no purchases can be made except by him or at his direction. He investigates the petitions for tax adjustments; he visits the county home and the chaingang; he keeps in touch with construction projects, etc. In a word, he is prepared to give the commissioners a disinterested opinion on most of the propositions which will be presented for their consideration. The people soon learn that if they want prompt action by the board they had better present their concern to the auditor ten days beforehand. Another very important service which the auditor renders the commissioners is in furnishing them financial information. In some counties the auditor lays a full financial statement before them at each meeting. How much more satisfactory this is than when the commissioners have nothing to guide them except a mere statement of bank balances.

The county board usually conducts its business without definite rules of procedure. The delegations are generally received in the morning and the auditing of claims left until the crowd has dispersed. While the meetings are conducted with no formality, often in confusion, the commissioners take their duties seriously and usually render the county far more service than they are paid for. If their methods are crude, it is because they know no other.

Patronage:

Unfortunately there still persists in all phases of American government the idea of "spoils." County offices are sought and filled on a party basis. An official feels that he owes his nomination and election to his party and that he must use the privileges and prerogatives of the office in the interest of his party. In most men who are elected to county offices this party loyalty is tempered by a certain innate sense of honesty, so that there is no brazen or vicious abuse of power. Men who would not steal outright justify themselves in distributing patronage of a petty sort among their

friends and partisans. If there are purchases to be made, if there are contracts to be let, if there are positions to be filled, it is perfectly natural to remember those who supported the ticket. To remit a fee, to reduce an assessment, to give an extension in collecting a tax, to be a bit easy on your friend, is not looked upon as dishonesty. It is part of the game of politics. Otherwise county commissioners are generally honorable men and give generously of their time to serve the county. Of course, there is occasionally a commissioner who will use his office for private gain. For the most part, however, the only corruption is that which takes the form of patronage. The officials do not think of it as corruption, for to them county offices are gifts, and he who receives a gift must return the favor. To them politics is a game and "to the victors belong the spoils."

POSSIBLE IMPROVEMENTS IN THE COUNTY BOARD

The Commissioner Plan Analyzed:

In state and municipal government the tendency is toward centralization rather than decentralization, a short ballot rather than a long ballot, a small council rather than a large one. In county government, too, popular government is furthered by simplicity and directness. The commissioner plan compares favorably with other types of county government in general use. It fits the South better than a system in which the township figures prominently. It is to be preferred to the large, unwieldy board of the Middle West. A small board of commissioners chosen at large corresponds to a board of directors in a corporation and thus is in keeping with the experience of private business. The deficiencies in county government are not due to the board of commissioners *per se*, but rather to the lack of an effective correlation between the board and the other agencies and departments of the county organization. The size of a county board and the manner of selecting the members ought to bear some relation to the functions which it is to perform. If the board were to become strictly a legislative body, as some authorities advocate, it would be important that it be representative, even though that necessitate a rather large membership. So long, however, as its

functions remain primarily administrative, a board of three or five members is superior to a larger one. Wisconsin, Illinois, New Jersey, Michigan, and other states with large boards are very much dissatisfied with them. North Carolina is distinctly in advance of many other states in this respect, and to that extent the problem of reorganization is simplified.

The Commission Plan:

In Buncombe and Jackson counties, where the commissioners are employed full time, each being the head of a department, three seems to be the proper number. One is commissioner of finance, another is commissioner of highways, and the third is commissioner of institutions. It is conceivable that the volume of county business may grow until additional departments are needed, but three are sufficient for the present. This "commission plan" of government was first adopted by cities about twenty years ago and now is in wide use. Other cities which adopted the commission plan have since taken a further step in centralized responsibility by adopting the city-manager plan. Both systems have given the cities good government, and the counties can profit from their experience.

A Full-Time Chairman:

There are many counties which do not have business enough to warrant three full-time commissioners but recognize the need of one full-time official to act as agent and representative of the board. Consequently, several counties have provided for a full-time chairman. This is the case in Craven, Mecklenburg, Sampson, Alamance, and several other counties. In Alamance County the chairman has very large powers and is elected as "chairman of the board and county manager." In other counties, while the chairman does not give his full time to county affairs, he does serve more than the other members and receives a proportionately larger compensation.

The County Auditor:

The greatest handicap to the county board has been the lack of an agent to execute its orders and to make investiga-

tions of various sorts. A few counties have tried to meet the situation by employing one or more of the commissioners the whole time. This is not a very dependable method for the reason that none of the commissioners may be able to abandon his private business, and if he were, he might not be qualified to undertake an administrative position. Nearly forty counties have found it more satisfactory to elect or employ a county auditor who will act as clerk to the board, keep the books of account, and serve in many ways as the agent of the board. The powers and duties of the auditor vary in the several counties. In some he is little more than a bookkeeper, but even at that rendering a valuable service. In other counties he is, in addition to being an auditor, a purchasing agent, the county tax supervisor, and a sort of executive secretary to the board. This is the case in Edgecombe, Moore, New Hanover, Union, Wilson, and many other counties. His powers approach those of a county manager, though he can hardly be called that until he is in a position to exert real control over the other county officers. Nowhere in North Carolina does the auditor have the power to appoint and remove subordinate officials. The auditor, at best, is a sort of magnified clerk to the board, but even at that, a tremendously valuable official.

In those counties which do not have an auditor the register of deeds is *ex officio* clerk to the board, an arrangement which is rarely satisfactory. In the first place, he is not apt to possess a sufficient knowledge of accounting to keep a thoroughgoing set of books. Being dependent on popular election, he may be afraid to display too much aggressiveness. Even if he has the capacity and the inclination to serve the board as an executive agent, he does not have the time. His recording work keeps him tied to his office. Finally, his pay depends upon his work as a recording officer. What he does for the board, aside from routine duties, must be done gratuitously. The register of deeds is chosen for another purpose; he ought not to be required to serve as clerk to the board. Every county board ought to be free to choose its own clerk. They may choose a mere clerk and pay him a clerk's salary; they may choose a trained accountant and make him a real auditor, paying

him accordingly; they may choose a man of executive ability, give him the powers of a county manager, and pay him a manager's salary. Some counties will choose the manager at the start, others will evolve one, but eventually most counties will have one.

The County Manager:

There are three counties in North Carolina which already have county managers, at least in name. Reference has already been made to Alamance County, where the manager is elected by popular vote. This method has the virtue of providing a real chief executive with no one superior to him. He is responsible to the people and to them alone. Whether this is an advantage or a disadvantage need not be discussed at this point. In Iredell County the manager is chosen by the county commissioners and serves at their pleasure. When chosen in this manner the county manager is the counterpart of the city manager, except that he may not have as large powers. In Hyde County a special act in 1925 dissolved the board of commissioners and set up in its place a board of managers, which, in turn, was to choose a county manager. It chose one of its own members. This is a confusion in terms and was a more complete upheaval of the existing structure than there was any valid reason for. It is not the place here to analyze the county manager and his place in a reconstructed county government. The office is mentioned in this connection as one of the means by which the county board of commissioners may secure a responsible executive agent.

The commissioners cannot administer county business efficiently by devoting a day or two a month to it. Either one or more of their number must be giving full time to the work, or they must employ some one who can do so. A corporation which is spending a quarter of a million dollars a year and employing scores of people ought to have an administrative head. No one is more convinced of this than the commissioners themselves.

Increase in Powers:

There are some students of government who feel that a county ought to be recognized as a municipal corporation

and the county board become a legislative body, with such police powers and ordinance-making powers as a city council possesses. In strictly urban counties it might be wise, even necessary, to give the board legislative powers. Counties which are operating under home-rule charters must have some legislative powers. But in rural counties, such as most of the North Carolina counties are, home rule would hardly be expedient. It would result in one hundred varieties of county government. In many respects we need more uniformity rather than more variability. For instance, there should be uniformity in fees charged, in accounting methods, in financial reports, in tax procedure, in law enforcement. In some other matters the commissioners should probably have a larger discretionary power than they now enjoy. Much of the local legislation with which the General Assembly is burdened concerns matters which the commissioners are competent to decide. The amendment of 1916[49] was designed to check the avalanche of local bills which descends upon the legislature at every session, and it has helped some. But the discretionary powers of the county board could be further increased with more benefit than danger.

A Non-partisan Board:

Reformers are prone to advocate that this or that phase of government "be taken out of politics." This is not to be desired; probably it is not what they really have in mind. What is needed is not that government be divorced from politics but that the politics bear some relation to the unit of government in question. National issues have no connection with county issues. There is no logic at all in choosing county commissioners on the basis of their national politics. Whether a man is a Democrat or a Republican in no way affects his qualifications for a county commissioner. Yet there are two reasons why county officials continue to be chosen on the basis of national party affiliation. In the first place, a contest stimulates public interest, and, since there is no other alignment, the contest is waged between Democrats and Republicans. If a contest were an end in

[49] *North Carolina Constitution*, art. II, sec. 29.

itself, like a football game, there would be some validity in this argument, but politics ought to be a contest of principles. Candidates should be standard bearers, champions of a cause. It must be admitted, however, that even our national elections are becoming less and less contests of principles, and more and more contests between persons. This would not be altogether bad—for candidates embody principles—if everybody would ignore party emblems. A political party serves a useful purpose so long as it stands for some issue, but it becomes an evil when it becomes no more than a vehicle for a candidate. If the contest is to be waged between persons, there ought to be no camouflage about it. The second reason why local officers continue to be elected as Democrats or Republicans is that the party leaders realize that a national organization must reach down into the state, the county, and the precinct. Local offices are the prizes which the party offers to its precinct and county workers. For that reason county officers are chosen on the very illogical and artificial basis of national party affiliation.

There is no reason for choosing an officer on the basis of his "views" unless he is a policy-determining officer. In a county the only policy-determining officers are the commissioners. Hence, they might logically be elected as supporters or opponents of county issues—a program of expansion versus a program of retrenchment, consolidation of schools versus one-room schools, a county health department versus no health department, etc. While a contest of principles rather than of persons might be logical in choosing commissioners, it is hardly practicable. The issues change from year to year. It would be hard to keep up interest in a party based on such transitory issues.

County commissioners, like the rest of the county officers, should probably continue to be chosen on the basis of their personalities. Let the voter weigh the respective candidates as to integrity, balance, business judgment, courage, social vision, and general attitude toward the dominant local issues of the day. A good many voters, probably, already cast their votes with some independence of thought, especially in choosing commissioners. But party loyalty, espe-

cially where there is an open ballot, tends to make a voter compromise with his real conviction and his best judgment. So long as a man runs as a party candidate, he will not be supported or opposed on his merits alone.

The ideal way to select county commissioners would be by use of the preferential ballot. This means that if there were three commissioners to be elected, any number up to eight or ten could file nominations by petition. Their names would appear on the ballot alphabetically, with no party emblems, and the voter would indicate on the ballot which was his first choice, second choice, third choice, fourth choice, and so on. The three favorite candidates would be declared elected. With this method of voting the voter can express his real choice without fear of sacrificing his vote, for if his favorite candidate does not get enough votes to be elected, his ballots are distributed among those marked as second choices. This method focuses attention on the candidate and not on a party emblem. Finally, it virtually insures minority representation. A preferential ballot is not of much value in electing a single officer, but it is the fairest way to select representative bodies.

If minority representation is the chief end in view, however, there is a simpler way to secure it. By limiting the number of party candidates to two, if three seats are to be filled, or to three, if five seats are to be filled, both parties are insured representation. The Pennsylvania constitution provides for minority representation on the county board. This is done by providing that no voter may vote for more than two candidates. As there are three members to be elected, the minority party is assured of one seat. North Carolina borrowed the commissioner plan from Pennsylvania, and it is unfortunate that this feature was omitted. For instance, in 1924 the Surry County Democrats nominated only two candidates for the board of commissioners, thus insuring the election of one Republican. In counties where the two major parties are of nearly equal strength, minority representation on the board has a most salutary effect. It allays friction, it prevents misrepresentation and calumniation of the board, it prevents, or at least exposes party patronage, and it unites the people in their support of

a program of progress. What a wasteful, suicidal policy it is for the citizens of a county to divide into two opposing camps and fight each other over external issues instead of uniting in the cause of good government and the development of a richer, better county!

Chapter V

THE ASSESSMENT AND COLLECTION OF TAXES

COUNTY REVENUE

The Increasing Cost of Government:

The last two decades have witnessed a tremendous increase in public expenditures—federal, state, and local. This has been an inevitable accompaniment of the extension of public services. Whether the scope of governmental activity has become too broad, or whether it will be even further extended, need not be discussed here. It is sufficient to remind ourselves that the increase in governmental functions has come as a result of a public demand. There is now a counter demand that the burden of taxation be lightened. It appears to be impossible to heed both demands, and so it would be were it not for the fact that the overhead cost of government has been excessive. Until the "slack" has been taken up it is entirely possible to reduce taxes and extend the public service at the same time.

In 1910 the one hundred counties of North Carolina spent approximately $5,000,000 and had a bonded debt of $5,000,000; in 1925 they spent $38,000,000 and their bonded debt had mounted to $102,000,000. The per capita tax for county and school purposes in 1910 was $3.01; in 1925 it was $13.98. During the same period of time the county debt rose from $2.25 to $39.30 per capita. It is quite possible that the average taxpayer is getting more service for each dollar of tax than ever before. This is because standardized schools, improved highways, and a public health service reach and serve all the people, whereas the more limited services of a generation ago benefited relatively few people. Nevertheless, the most casual observer can detect wastes and inefficiencies in county administration that ought not to be tolerated. There must be an intelligent and dispassionate study of local taxation and administration in order

to discover where there is waste, and then courageous and determined efforts to eliminate it. The functions of government will increase rather than decrease; the problems of administration will become more complex; the opportunities for waste will multiply and the tax burden become crushing unless a higher level of efficiency can be attained. Efficient government cannot be maintained unless supported by an alert and discriminating citizenship. The problem is thus one of education as well as one of organization.

Growth in County and School Taxes:

The growth in the volume of county and school taxes in North Carolina since 1910 is shown in the following table. The amount raised through property and poll taxes for the state is also given so as to show the total amount of taxes borne by property and polls. The increase in taxed wealth is also indicated. Since taxed wealth does not represent true wealth, nor the same relation to true wealth at all times, the rate of levy is not a true index of the tax burden. In 1922 the federal census estimated the true wealth of North Carolina at $4,543,110,000 or 80 per cent more than the tax books revealed. Prior to the revaluation in 1920, the discrepancy was certainly much greater. The actual increase in tax burden is greater than the increase in rate indicates, because valuations, on the whole, are much higher than they were from 1910 to 1919. The increase in the per capita tax is a better index of the growing tax burden. Of course, these increases are offset to some extent by the reduced purchasing power of the dollar.

State Control over County Taxation:

The state government, through the constitution and through legislative enactment, establishes the tax system for the state, and the local units of government have very little discretion in determining how they shall raise their revenue. The state names very largely the functions which a county must support by taxation, and it limits very definitely the nature and amount of the tax. These limitations are explained in the section which deals with the powers of the commissioners and need not be repeated here. The county

PROPERTY AND POLL TAXES

Year	County	School	State	Total	Taxed Wealth	Rate Per $100 Valuation	Tax Per Capita
1910	$2,948,268	$2,104,000	$1,581,705	$6,633,973	$617,690,386	$1.074	$ 3.01
1911	3,435,147	2,572,777	1,890,440	7,898,364	740,713,962	1.066	3.52
1912	3,452,496	2,600,047	1,907,781	7,960,324	747,500,632	1.065	3.49
1913	3,929,832	2,863,058	2,208,269	9,001,159	783,919,168	1.148	3.89
1914	4,049,246	3,192,383	2,274,904	9,516,533	807,672,784	1.178	4.05
1915	4,732,254	3,570,973	2,507,081	10,810,308	890,917,321	1.213	4.54
1916	4,810,591	3,633,501	2,503,108	10,947,200	889,565,943	1.203	4.53
1917	5,568,847	4,085,278	2,652,572	12,306,697	942,766,368	1.302	5.02
1918	6,068,011	4,875,152	2,890,784	12,833,947	1,029,993,778	1.343	5.12
1919	8,289,410	8,566,120	1,280,411	18,135,941	1,099,296,290	1.650	7.19
1920	9,509,930	7,930,008	3,054,772	20,494,710	3,156,243,202	.650	8.01
1921	11,958,582	14,272,267		26,230,849	2,579,772,023	1.017	10.11
1922	12,746,798	15,086,359		27,833,157	2,576,338,426	1.070	10.58
1923	15,140,469	18,281,343		33,421,812	2,657,337,703	1.258	12.54
1924	15,745,198	19,798,679		35,543,877	2,711,783,919	1.311	13.16
1925	17,220,451	21,008,170		38,228,621	2,746,915,916	1.392	13.98

officers are responsible for the levy, collection, and expenditure of the revenue and must give an accounting for it.

Sources of County Revenue:

The main reliance of the county is the general property tax, yielding 93 to 95 per cent of the total income, except where there is a grant from the State Equalizing Fund. This is supplemented by the tax of two dollars on each poll, the dog tax, one dollar on each marriage license, and certain privilege or occupational taxes. The revenue derived from the last mentioned source, known as Schedule B taxes, is considerable in urban counties, or counties with large towns, but is insignificant in the rural counties.

Fines, penalties, and forfeitures yield considerable revenue for the school fund. Whenever any county officer, including justices of the peace, receives or collects a fine, penalty, or forfeiture, the law requires that he shall pay over and account for the same to the treasurer within thirty days.[1] The law further provides that any officer violating this requirement shall be guilty of a misdemeanor and upon conviction shall be punished by a fine or imprisonment at the discretion of the court.[2]

In those counties where all officers are paid on a salary basis the fees of their offices are an additional receipt.

The accompanying table indicates the tax revenues for county and school purposes for the years 1924 and 1925 as reported by the State Commissioner of Revenue.

County Purposes	1924	1925
County-wide property taxes	$ 14,287,488	$ 15,994,017
Property taxes in special districts	1,251,680	962,261
Poll taxes (for poor relief)	206,030	264,173
B and C licenses	971,313	1,856,171
Total for county purposes	$ 16,716,511	$ 19,076,622

[1] *Consolidated Statutes*, 7875.

[2] *Ibid.*, 7876; see also *ibid.*, 4398.

Schools	1924	1925
County-wide property taxes	$ 14,846,857	$ 15,679,862
Property taxes in special districts	4,163,053	4,570,212
Poll taxes (for schools)	600,869	575,537
Dog taxes	187,900	182,559
Total school taxes	$ 19,798,679	$ 21,008,170

Existing Taxes Examined:

It has already been pointed out that the main support of the county and the schools is the general property tax and that it is supplemented in a small way by a poll tax, a dog tax, and a few privilege and license taxes. Taxation is too large a subject to be incorporated in a treatise on government, though of course it is so intimately related to government, indeed is so much a part of government, that it cannot be passed over unmentioned.

The General Property Tax. The general property tax was introduced when land was the principal form of wealth and the extent of one's land holdings was a fair index of his income. At the beginning of the nineteenth century practically all property was at least tangible, lands, buildings, ships, merchandise, furniture, implements, and livestock. Today wealth is measured largely in terms of stocks and bonds; at least this is true of the larger aggregations of wealth. Securities represent an interest in or a claim on property and are income producing, but being intangible easily escape taxation. It is true that the tangible property which the securities represent is taxable, but that does not help the community in which the security holders live. And it is the roads, schools, courts, and county institutions which are located where a man lives that he uses. Although it means in some instances double taxation, it is just that intangibles be subject to the property tax, but not necessarily at the same rate as tangible property.

Despite the rapid industrialization of the state there has been only a slight increase in the amount of intangibles listed for taxation. It is doubtful if more than fifteen per cent of the intangible wealth of the state is on the tax books.

This means that farms and homes and factories are bearing the burden of local government. Owners of intangible wealth justify evasion on two grounds. In the first place, they say with truthfulness that the rate has become so high that the tax is confiscatory. In the second place, they say, also with truthfulness, that tangible property is not listed at full value and that if they list their notes and bonds they must list at 100 per cent and that this is discrimination. Those who are too honest to misrepresent their taxable wealth avoid the tax by investing in tax-exempt securities.

Many states levy a flat rate on moneys and credits, usually a very moderate rate. For instance, in Iowa moneys and credits are listed separately and taxed at the rate of fifty cents on the hundred dollars' valuation. In Virginia money is taxed at the rate of twenty cents and notes at fifty-five cents. The North Carolina constitution provides that all types of property shall be taxed by a uniform rule, so that no change can be made without an amendment. At the next general election the people of the state will have a chance to vote on an amendment which would permit a classification of property with different rates for each.

While it may appear like partiality to give a lower rate to intangibles, it can be defended on practical grounds. It is possible that a flat rate of fifty or sixty cents on solvent credits would yield more revenue than the present high rates. The lower rate might also attract capital into the state and bring about lower interest rates, thus indirectly benefiting the debtor class.

The Poll Tax. As already explained, the poll tax used to be equivalent to the tax on three hundred dollars' worth of property. It is now limited to two dollars for state and county purposes and one dollar for municipal purposes. Only male inhabitants twenty-one to fifty years of age are subject to this tax, and the county commissioners may excuse in case of poverty or infirmity.

Most states have abolished the poll tax, and certain jurists in this state have decried its use here, maintaining that it is taxing a man for the very air he breathes. This is viewing the tax from only one angle. There are thousands of able-bodied young men who own no property but who

earn fair incomes and pay no local tax except the poll tax. These men have the same use of the roads, schools, courts, and public institutions as the more thrifty individuals who save their money and acquire some property. There is no reason why they should not make a slight contribution to the government. Our tax system has tended too much to penalize the thrifty and excuse the thriftless.

Now that women have the vote and in large numbers are earning independent incomes, there is no valid reason why the poll tax should not be applied to them—at least the unmarried women.

Until a few years ago no man could vote if he had not paid his poll tax. This was hard on candidates, for hundreds of voters refused to vote unless some one paid their poll tax for them. This amounted to selling one's vote and was a vicious practice. Probably it is well that this feature was repealed. Nevertheless, the principle was all right. Why should a person who fails to meet his obligations to the government have a voice in that government?

The Dog Tax. One purpose of the dog tax is to provide a fund from which to compensate the owners of sheep or poultry killed by dogs. It is a good tax, for the number of worthless dogs in the state is myriad. Few of them are listed for the property tax. The sheep industry should be encouraged, and the man whose sheep are molested by dogs is entitled to compensation.

The License Taxes. The privilege and license taxes which can be imposed by the county are so few and the yield so slight that they do not warrant separate treatment here. Probably the state ought to relinquish more of these taxes for local purposes.

Separation of Tax Sources:

North Carolina has made no use of the property tax for state purposes since 1920. The state government is supported by an income tax, an inheritance tax, and various privilege and license taxes. The Highway Fund is raised through a gasoline tax and an automobile license tax.

Whether it was wise for the state to discontinue the property tax at a time when the expenses of the state

government were mounting so rapidly is debatable. It may be said in favor of the policy that the state had other sources of taxation which it could utilize, while the local units of government had practically no other sources and thus needed all that the property tax could yield. On the other hand, the relinquishment of the property tax by the state has thrown the whole responsibility for assessment and collection on the local government. This has invited inequalities in valuations *between* counties and *within* counties. The state is no longer affected by the inequalities. Furthermore, local assessment officers do not have sufficient training to assess corporation properties, and while the state renders some assistance in this matter, there is evidence that it is less diligent than it might be if it were financially interested. Whether or not there is a state property tax, the state ought to assume a larger measure of responsibility for the enforcement of its tax laws.

Tax Funds and Tax Levies:

In collecting and accounting for county revenue there are many funds to be kept distinct. In the County School Fund are deposited the revenue from the county-wide school levy on property, a dollar and a half of each poll tax, the receipts from the dog tax, the fines, penalties, and forfeitures which are collected, and receipts from the various state funds. For accounting purposes this fund is further subdivided into current expense, capital outlay, and debt service funds.

There are few counties which do not have numerous special school districts, each with its particular supplementary levy. These special tax districts are a great nuisance, for their boundaries are so changeable and indefinite that it is difficult to ascertain in which district each taxpayer belongs. In some counties there are special road districts but usually they at least conform to township lines.

The General Fund is the fund from which salaries, courthouse expenses, court costs, the expense of the jail, poor relief, and miscellaneous items are paid. The levy for this fund is limited to fifteen cents on a hundred dollars' valuation unless the legislature authorizes an additional

levy for a special purpose.[3] If it is impossible for a county to meet all its current expenses, except for schools, with a fifteen-cent levy, the usual method is to set up a special fund for roads and bridges and get an authorization from the legislature for that purpose. Even after deducting road expenses there are many counties which cannot keep within the fifteen-cent limitation. They must therefore obtain legislative authorizations to set up other special funds.

The number of accounts into which the General Fund is divided and the care with which these accounts are kept depends upon the presence or lack of a competent bookkeeper in the courthouse. Most of the counties which have put all officers on a salary basis have set up a "fee and salary fund" in which all fees are deposited and from which, if possible, all salaries are paid.

All counties have bonded indebtedness. To provide for the payment of principal and interest there must be specific tax levies for the purpose. Ordinarily the levy is authorized at the time when the bond issue is authorized. Legally there should be a particular levy for each outstanding debt, but to simplify bookkeeping it is customary to group them and make a general levy for "bonds and interest."

The ordinary tax receipt shows, in addition to the special district levies, at least four county-wide levies—General Fund, County Schools, Roads and Bridges, Bonds and Interest.

ASSESSMENT OF PROPERTY

Since more than 90 per cent of a county's revenue is derived from the property tax, one of the most important phases of county administration is the discovery, appraising, and listing of taxable property. In the performance of this important work county officers have been most deficient. The federal census estimates North Carolina's taxable wealth at 57 per cent more than the tax books show, and that is probably a conservative estimate.

Exempted Property:

In North Carolina all real and personal property, not specifically exempt, is subject to the general property tax.

[3] *North Carolina Constitution*, art. V, sec. 6.

The real estate exempted includes that owned by the United States or the state of North Carolina, however held, and that owned and held by counties, cities, towns, or school districts, and used wholly and exclusively for public and school purposes; all property used exclusively for educational purposes; graveyards and trust funds in support thereof; church property, libraries, academies, seminaries, industrial schools, orphanages, asylums, and hospitals; land and buildings owned and used by the American Legion; and the property of Indians who are not citizens, except land held by them by purchase. The personal property exempted includes the furniture, furnishings, and endowments of the religious, educational, and charitable institutions mentioned above; wearing apparel, arms for muster, household and kitchen furniture, the mechanical and agricultural instruments of mechanics and farmers; libraries and scientific instruments; provisions not exceeding the total value of three hundred dollars; and growing crops.[4]

Homes encumbered with debt are exempt from taxation for 50 per cent of the indebtedness, provided (1) the holder of the note or mortgage resides in the county and lists the same for taxation, with a 50 per cent exemption; and (2) the indebtedness does not exceed $8,000 nor run for less than one nor more than thirty-three years.[5]

It is part of the work of an assessor to enter on blanks prepared for the purpose a correct description of all property exempt from taxation. A list of this property is required to be sent by the register of deeds to the State Board of Assessment,[6] but it is rarely if ever done.

The Revaluation of 1919:

Land and buildings, and in fact all property, are assessed for taxation quadrennially in this state, the years being 1919, 1923, 1927, and so on. A county may, however, secure permission from the General Assembly to make a general revaluation in some other year if conditions seem to warrant it. Individual properties may be given a new value because

[4] *Consolidated Statutes*, 7768, 7901, 8055, 8059, 5029; see also *Machinery Act, 1927*, sec. 69.
[5] *North Carolina Constitution*, art. V, sec. 2. [6] *Machinery Act, 1927*, sec. 71.

of fire, flood, sale, purchase, or improvement on the off years, but ordinarily real property is carried on the books for four years at the same figure. Personal property is listed annually but assessed only quadrennially.

Various methods of assessment have been tried in the past with varying degrees of success. In 1919, on account of the mounting costs of government and the flagrant inequalities known to exist, the state undertook to make a thoroughgoing revaluation and assess all property at its true money value as the constitution demands. The slogan was "make the tax books tell the truth." The task was so big that it was not completed in time for the 1919 levy, the new valuations going into effect in 1920. Some idea of the accomplishment may be gained from an examination of the figures. Real property rose from $430,618,432 to $1,700,989,063 and all property from $1,099,296,290 to $3,156,243,202. Unfortunately the revaluation came at a time of inflated prices. A few months after the work was completed, the slump in prices and the reduced land values made the tax valuations unjustly high, especially in the cotton belt. It was at this time that the state decided to relinquish the property tax; so it authorized the county commissioners to make such horizontal reductions in their respective counties as they saw fit. Acting on this authority, sixty-two counties made horizontal reductions ranging from 10 to 50 per cent and eight others had revaluations in 1921. Thus the main purpose of the general revaluation was defeated. There was just as much inequality as before, at least *among* counties; there was, however, more equality *within* a county. Another gain was the discovery and listing of a large amount of property which had not been on the tax books at all before. Even after the reductions of 1921 the listed taxables of the state remained more than double what they were in 1919. Since there was little change in land values between 1921 and 1923, the counties were permitted to omit the revaluation in that year and most of them did. A few counties made assessments in 1925, but in most counties there was no general revaluation for six years. This has been a period of remarkable development, and valuations, especially in the towns, were badly out of adjustment prior to the 1927 assessment.

The Tax Officials:

The county commissioners of each county are required on the first Monday in April in each year to meet and appoint a resident freeholder as county supervisor.[7] In those counties which have an auditor, tax clerk, all-time county chairman, or other similar official, he may serve in this capacity. The county supervisor has general supervision of the assessment of all real and personal property for taxation in his county. He appoints an assistant for each township, or in populous townships more than one.

The Quadrennial Assessment:

In quadrennial years the county supervisor[8] and assistants (then called assessors) meet in the courthouse, soon after their appointment, for a general consideration of methods of securing a complete list of all real and personal property and of valuing the same in an equal manner in the several townships. They begin the work of listing and assessing the real and personal property not later than the first day of May and complete it as soon as possible, and not later than the first day of June.[9]

It is the duty of each assessor personally to visit and inspect all of the real and personal property which he is to assess, make diligent inquiry as to its value, and assess it at its true value in money. An adequate classification and description of the property must be entered on the blanks prepared for the purpose. The township assessors work under the supervision and with the advice and coöperation of the county supervisor. He is supposed to assist, encourage, and instruct them in every possible way. In order to arrive at the true value in money of each and every parcel of land, the county supervisor and the local assessors may examine the owner and other persons under oath.[10]

As soon as practicable after each of the assessors has completed his work and made return, the county super-

[7] *Machinery Act, 1927*, secs. 42 and 100-101.

[8] In the years for the quadrennial assessment of real property the commissioners may, in their discretion, appoint a board of three members instead of a single supervisor. Likewise, the county supervisor (or board) may appoint in each township either a single assessor or a board of three assessors.

[9] *Machinery Act, 1927*, sec. 102. [10] *Ibid.*, sec. 105.

visor is required to call them all together and permit them jointly to review their valuations and assessments, to the end that it may be ascertained whether the same standards have been used in the various townships. Any obvious errors or inequalities are to be corrected.[11]

It is the duty of the county supervisor to prepare then a complete roll or list for each of the several townships, giving the names, arranged as nearly alphabetically as possible, of all the taxpayers and the property and valuations of each. This roll is then filed as a permanent roll for the quadrennial period, either with the board of commissioners or with the auditor, tax clerk, or other similar officer. To it may be added from time to time such real property as may have been omitted.[12]

Board of Equalization and Review:

The board of county commissioners constitutes the Board of Equalization and Review. On the second Monday in July the commissioners meet, first giving ten days' notice by publication, for the purpose of equalizing the valuations, so that each tract or parcel of land shall be entered on the tax list at its true value in money. In counties in which there is an auditor, tax clerk, or other similar official, such official acts as clerk to the equalization board. In other counties the register of deeds acts. Any property owner who feels that his property has been assessed for taxation at an amount in excess of the actual value of such property, on the first day of May of the assessment year may file a formal complaint and have his property reassessed and reappraised. This complaint must be filed with the clerk of the board some time during the months of May and June, and ordinarily on a blank prepared for the purpose. Any citizen of the county may file complaint of the undervaluation of any real property in the county, or the board may of its own motion revise the valuation of any property that it finds to be valued at more or less than the actual value of such property on the first day of May of the current year.

Not later than the 15th of July the county commissioners must meet and consider the applications for reassess-

[11] *Ibid.*, sec. 105½.

[12] *Ibid.*, secs. 106 and 107.

ment. The complainant may appear in person or by attorney and may produce evidence tending to support his allegation of over-assessment. The board may subpoena witnesses to appear and testify concerning the property in question. Upon such hearing the commissioners may increase, decrease, or confirm the valuation fixed by the board of assessors. If the property owner is still dissatisfied he may appeal to the State Board of Assessment.[13]

Standards of Valuation:

While the constitution calls for valuations equivalent to the true value in money, this principle is not uniformly followed. Ordinarily, the county commissioners agree to adopt a standard less than 100 per cent and advise the assessors to adhere consistently to that standard. The most usual standards are 60 per cent, 66⅔ per cent, 75 per cent, or 80 per cent. While this is a plain violation of the constitution, it is defended on practical grounds. It is maintained: (1) That so long as the lower standard is applied uniformly it will work no injustice to anyone and will simply be reflected in a higher rate of levy; (2) That tangible property should not be valued at one hundred per cent because there is so much intangible property that is not listed at all; (3) That it is impossible to ascertain the exact money value of taxable property and that an attempt to assess it at 100 per cent will result in some being assessed at a figure above its actual value. This will invite a multitude of complaints. A slight variation from a 60 per cent standard will be accepted with less protest than a variation from a 100 per cent standard; (4) There is a widespread conviction on the part of taxpayers that their property should not be taxed at full value. Irrational as it may appear, a person with $5,000 worth of property would rather pay a one-dollar rate on a $3,000 valuation than a sixty-cent rate on a $5,000 valuation.

On the other hand, those who advocate a 100 per cent valuation maintain, with plenty of experience to support their argument, that as soon as reduced valuations are permitted inequalities creep in. Furthermore, anything less

[13] *Ibid.*, secs. 108 to 110; see also sec. 50.

than a full valuation on tangible property puts the owner of intangible property at a disadvantage if he lists his property; so he justifies himself in concealing it. High rates of levy tend to drive intangible property from the tax books, so that reduced valuations on real property actually result in a higher tax on the same.

The general property tax is a very unsatisfactory tax as it operates under modern conditions, but there seems to be no substitute for it in local government.

Listing of Taxables:

In the years when real property is not assessed, the property owners are entrusted with the task and duty of listing their personal property. The taxing machinery is the same as in the quadrennial year, except that the assistant supervisors are called list-takers instead of assessors and their duties are as different as their titles indicate.

The county supervisor and assistants meet together at the courthouse on the first Monday in May for general instructions, begin work the next day, and try to complete the listing by the end of May. The list-takers meet the taxpayers at convenient points in their respective townships and receive the tax lists. The law provides that:

> The township list-taker and assessor shall obtain from each taxpayer a full, complete and detailed statement of each and every piece and kind of property, real, personal, and mixed, which said taxpayer shall own on the first day of May, together with, as near as possible, the true value in money of all such property owned by him, or them, or which may be under his or their control as agent, guardian, administrator, or otherwise, and which should be listed for taxation; and it shall be the duty of said township list-taker and assessor to ascertain by visitation, investigation, or otherwise the actual cash value in money of each piece or class of property in his township, and to list such property at its actual value for taxation. He is hereby authorized and empowered to administer oaths in all cases necessary to obtain full and correct information concerning any taxable real and personal property in his township.
>
> . . . It shall be the duty of the county commissioners and the several list-takers to be constantly looking out for property which has not been listed for taxation, and when discovered, such

property shall be duly placed upon the assessment list and properly assessed for taxation. . . . If the list-taker or the commissioners have sufficient evidence upon which to form a belief that a person has personal property, consisting of money, credits, debts due or to become due, or any other thing of value liable for taxation and not listed, he or they shall have power to take such action as may be necessary to get said property on the tax lists.[14]

The board of commissioners meets on the second Monday in July as a board of equalization and an attempt is made to equalize the valuations on real and personal property, so that all shall be listed on the tax books uniformly, supposedly at its true value in money. The board may not increase or diminish the assessed value of any lands, except in assessment years, unless particular valuations have been affected by some extraordinary circumstances, the fact in connection with which shall be found by the board in each case.[15]

The clerk of the board of equalization is required, within five days after the adjournment of said board, to furnish the State Board of Assessment with a copy of all proceedings of the county board of equalization, with respect to any and all changes in valuations made by such board. The clerk must also send to the State Board of Assessment a statement giving the aggregate value of real and personal property by townships and as a whole for the county and the average value per unit of land acreage and of the several classes of livestock.

As for the individual property owner, the law requires that he shall list, sign, and deliver to the list-taker a statement verified by his oath, giving all the real and personal property, moneys, credits, investment in bonds, annuities or otherwise, and the value of improvements on real estate since it was assessed, in his possession or under his control on the first day of May.[16] All bona fide indebtedness of a taxpayer may be deducted by the list-taker from the amount of the taxpayer's credits.

Penalties for Failure to List Taxable Property:

Any person, firm, or corporation owning or holding

[14] *Machinery Act, 1927*, secs. 44, 47, and 49.
[15] *Ibid.*, secs. 50, 50½, and 52.
[16] *Ibid.*, sec. 54.

personal property which is subject to assessment, who intentionally makes a false statement to the list-taker or to the board of equalization for the purpose of avoiding the payment of the just and proportionate taxes thereon, is subject to a penalty of ten dollars for every hundred dollars, or major fraction thereof, so withheld. The law makes it the duty of the sheriff, upon complaint made to him by any taxpayer of the assessment district in which it is alleged that property has been withheld, to investigate the case forthwith and bring an action in the superior court in the name of the state against the person so complained of.[17]

Any person who, to evade the payment of taxes, surrenders or exchanges certificates of deposit in any bank in the state or elsewhere for tax-exempt securities or surrenders any taxable property for non-taxable property, and, after the date of listing property has passed, takes said certificates or other taxable property back and gives up the tax-exempt securities or property, or executes any fictitious note or other evidence of debt for deduction from his solvent credits, is guilty of a misdemeanor, and upon conviction shall be fined not less than fifty nor more than two hundred dollars (one-half of which shall go to the informer), or imprisoned not less than one month nor more than six months, or both.[18]

There is another law on the statute books which reads as follows: "If any person shall, with a view to evade the payment of taxes, fail or refuse to give in to the assessing officer any bonds, notes, claims, or other evidences of debt which are subject to assessment and taxation, the same shall not be recoverable at law or suit in equity before any courts of this state until they have been listed and the tax paid thereon, together with any and all penalties prescribed by law for the non-payment of taxes."[19]

It is the duty of the list-takers and assessors, before receiving the returns of any taxpayer, actually to administer the oath required by law of taxpayers, the oath being read by the taxpayer in the presence and in the hearing of the list-taker or by the list-taker in the hearing and presence of the taxpayer. For failure so to administer said oath the list-taker becomes guilty of a misdemeanor, and upon con-

[17] *Ibid.*, sec. 60. [18] *Ibid.*, sec. 54. [19] *Consolidated Statutes*, 7913.

viction shall be punished, says the law, by imprisonment of not less than ten days nor more than six months, and in addition shall forfeit the sum of ten dollars for each omission, one-half to go to the person furnishing information sufficient to convict, and one-half to the educational fund of the state, said amounts to be deducted from the compensation of such list-taker and assessor.[20]

If any person liable to be charged with taxes willfully refuses to answer any questions respecting his property, or refuses to file, sign, and swear to his return, he is guilty of a misdemeanor, and on conviction liable to be punished by a fine not exceeding fifty dollars or imprisonment not exceeding thirty days, and it is the duty of the assessors or list-takers to have the offender prosecuted; and the list-taker is required to complete the list from the best information he can obtain. Every list-taker and chairman of the board of county commissioners has power to send for persons and papers and to examine witnesses and administer oaths.[21]

In all cases where the commissioners omit to enter upon the duplicate of their county any land or town lots situated within their county and subject to taxation, it is their duty when they enter the same the next succeeding year, to add to the taxes of the current year the simple taxes of each and every preceding year in which such land or town lots shall have so escaped taxation, with twenty-five per cent in addition thereto, so far back as the said lands have escaped taxation. When no assessment has been made for the years in which the property has so escaped taxation, the commissioners are authorized to value and assess the same for those years, *provided*, this shall not apply beyond five years. The same right extends over personal property, except that the back taxes and penalty cannot be collected for more than five years.[22]

It is the duty of the chairman of the board of commissioners to compare the current year's tax list from each township with the previous year's list and insert in the current list a description and valuation of all property not given in, and charge all such persons with 25 per cent in addition to the tax with which they would otherwise be

[20] *Machinery Act, 1927*, sec. 61. [21] *Ibid.*, sec. 68. [22] *Ibid.*, sec. 72.

chargeable, unless satisfactory excuse for the failure to list is given to the commissioners on or before the first Monday in October. All persons who own property and willfully fail to list it within the time allowed, before the list-takers or board of commissioners, are guilty of a misdemeanor and the failure to list is *prima facie* evidence that such failure was willful, and it is the duty of the board of commissioners to present to the grand jury the names of all such persons.[23]

So open, so flagrant, so universal are the violations of the tax laws, and so rarely are any penalties imposed that the laws are virtually "dead letters." Land is not assessed at its money value; personal property is assessed at all sorts of ridiculous values; only a small fraction of the solvent credits is listed at all. Rather than ask a taxpayer to perjure himself, the list-taker does not require him to take the oath, thus violating his own oath. Hundreds of taxpayers do not take the trouble to appear before the list-takers; they know that their previous year's list will be copied and no penalty imposed. No one will bring complaint against another taxpayer, for the violators are too numerous to single out one offender. The general property tax worked very well so long as most property was tangible and could be easily appraised and so long as the rate was only a few cents on a hundred dollars of property. With a combined county and city rate amounting to 2 or 3 per cent of the actual value of the property, tax evasion becomes universally practiced and generally condoned. One observer has said that the average taxpayer lists as much property as he thinks his neighbor who is in similar financial circumstances will list. Another has remarked that our present tax system is very much like passing the hat around. One must concede that it is a system demoralizing both to the public treasury and to the public conscience.

The Official Tax List:

The state provides each county with the forms (known as abstracts) on which the individual taxpayer lists his property with the assistance and under the direction of the list-taker. More often the list-taker asks the questions and fills in the

[23] *Ibid.*, sec. 73.

blanks himself, after which the taxpayer subscribes his name or his mark, supposedly under oath. These forms are arranged to show the different classes of property, the valuations, and the aggregate amount of taxable property. The writing is usually done in pencil, and very often there are mistakes in addition.

When the lists are all in, the list-taker, or assessor if it is an assessment year, arranges the abstracts in alphabetical order and transcribes the names, together with the total amount of each class of property, into a large, paper-covered book known as the township scroll. The scroll is supposed to be neatly executed in ink, the names arranged in strictly alphabetical order, and each page balanced by totaling both horizontally and vertically. The law provides that the list-takers and assessors shall not be entitled to pay unless they have performed the labor and made returns in strict compliance with the law.[24] Actually many of the list-takers are not competent to undertake this work, and many of the county supervisors are now having the list-takers turn in the abstracts, employing competent clerks to do the transcribing. Usually when the work is left to the list-takers they enter the names in the scrolls as the lists come in, setting aside certain pages for the A's, others for the B's, etc. Consequently the arrangement is not alphabetical at all except so far as the first letter is concerned. Usually an attempt on the part of the list-taker to balance the pages leaves him frustrated. It is more satisfactory to bring the abstracts into the office of the county supervisor and have the computations made by competent clerks. Sometimes the county supervisor has been no more competent than the list-takers, and in some instances he has been only a figurehead, never even meeting with the list-takers. The scrolls are required to be turned in not later than the third Monday in June.[25]

From the township scrolls the official tax list is prepared, the form being prescribed by the state. This book is sometimes called the tax duplicate because it is made in duplicate, one copy going to the sheriff or tax collector, the other remaining in the office of the clerk to the board. The

[24] *Ibid.*, sec. 51. [25] *Ibid.*, sec. 70.

official tax list is prepared by the register of deeds except in those counties where there is an auditor, tax clerk, or other similar official. It gives each taxpayer's name, the total amount of his taxables, and in separate columns the poll tax, the road tax, the school tax, and any special school tax to which he is subject.[26] The preparation of this book is much simplified when the township scrolls are in good shape.

Since the tax list carries the name of every taxpayer, with his tax for each purpose computed separately, it involves a great deal of work. It is not uncommon to find many errors and to find discrepancies between it and the township books, or between it and the tax receipts. Yet when one considers that it requires weeks of tiresome work, that there are thousands of calculations, and that the work is done by untrained people, it is not surprising that mistakes are made. A few counties use calculating machines, but it is more common to use a "rate book."

The commissioners usually determine the levy at their meeting in August, though occasionally in July. It can be done as soon as the amount of the taxables can be known with some approximation. The new fiscal control act requires that the levy be made not later than the Wednesday after the third Monday in August. If the levy is made as late as this it will be difficult for the tax clerks to compute the taxes by October 1.

The Tax Receipts:

In addition to the tax list the register of deeds, auditor, or tax clerk must prepare receipts to be given the taxpayers when they pay their taxes. The form of the receipt has not been uniform but is now prescribed by the State Board of Assessment.[27] Either of two forms is acceptable, the receipt with a stub or the receipt with a carbon duplicate. In the writer's opinion the stub form is inferior in several particulars. It is easy to make an error in filling it in, writing a different amount in the stub from what appears on the receipt. It is easy for the tax collector, if he is disposed to be dishonest, to change the stub after the receipt is detached. Another objection to the stub form is that after some of the

[26] *Ibid.*, sec. 74.

[27] *Ibid.*, sec. 74.

receipts are gone the rough edges of the perforations loosen the others, and they may be accidentally torn out and lost. The carbon duplicates are safer in all these respects. Furthermore, they can be written with one operation, thus saving work. Better than either of these forms is the receipt in triplicate, that is, with two carbon copies, one of which remains in the book and the other goes to the auditor daily. This permits the sheriff and the auditor to know the amount of uncollected taxes at any time without going through the books and laboriously counting the stubs or carbon duplicates. A triplicate is not necessary if a cash book is kept. The receipts are numbered serially, and there is a series for each township.

In Edgecombe County, and perhaps in other counties, the receipts are written when the tax is paid. This is somewhat of a hardship on the tax collector, but it has the advantage of permitting the receipts to be numbered serially in order of payment.

The Work of the State Board of Assessment:

The State Board of Assessment consists of the Commissioner of Revenue, the Attorney General, and the Chairman of the Corporation Commission. The Commissioner of Revenue is chairman and exercises the functions of the board when it is not in session.

The powers and duties of the state board may be summarized as follows:[28] (1) to confer with and advise assessing officers as to their duties and to institute proper proceedings to enforce the penalties and liabilities provided by law; (2) to prepare a pamphlet of instructions for assessors and explain any points which seem to be intricate and upon which assessors may differ; (3) to prepare forms to be used in assessing and listing property for taxation by local assessors and list-takers. The assessors' forms are furnished every fourth year and the list-takers' forms annually. A bill is submitted to each county covering the actual cost of printing and distribution; (4) to receive complaints as to property liable for taxation that has not been assessed, or of property that has been improperly assessed and to investigate and

[28] *Machinery Act, 1927*, secs. 3 to 7.

correct the same; (5) to act as a state board of equalization; (6) to require such annual or other reports from counties, towns, and cities as to furnish complete statistical information in regard to local taxation and indebtedness; (7) to make diligent investigation and inquiry concerning the revenue laws and systems of other states; (8) to furnish the legislature information in regard to state and local taxes; (9) to make an annual report to the governor setting forth the workings of the board during the preceding year, and containing the recommendations of the board in relation to all matters of taxation; and (10) be responsible for the assessment of public service corporations and assist in the assessment of all other corporate properties.

The local assessors are relieved of all responsibility for the assessment of public service corporations operating within the state. After the State Board of Assessment has completed the assessment of such corporations it certifies to the register of deeds of each county the apportionment of the valuations to which that county is entitled, and the board of county commissioners assesses against each valuation the same tax imposed on all other property of that district.[29]

Since it would be impossible for the average local assessor to appraise manufacturing establishments, banks, and other corporations, the following method is used: Every corporation in the state is required to secure a charter from the Secretary of State and report regularly to the Commissioner of Revenue the amount and value of its capital stock.[30] When the corporation lists its property for taxation with the local assessor, it must send a statement of the amount listed to the State Commissioner of Revenue. In case it lists its property at a figure less than the known worth of its capital stock, the Commissioner of Revenue reports the difference, which is known as the "corporation excess," to the county, and the corporation is taxed for the full amount. For instance, if a corporation had a capital stock of $10,000, worth at the time $12,500, and it gave in the value of its physical property as $9,000, the Commissioner of Revenue would report corporation excess to the amount of $3,500.

This system is a very satisfactory one, provided the true

[29] *Ibid.*, sec. 37.

[30] *Ibid.*, sec. 12.

present worth of the corporation is arrived at. It is natural that corporations should juggle their balance sheets so as to protect themselves as much as possible. Partnerships and foreign corporations do not have their capitalizations registered in Raleigh and thus cannot be checked in this manner. Consequently they are taxed only on their physical properties and at a figure determined by the local assessor. The unincorporated concern of large dimensions is one of the most difficult to assess. For example, a large mercantile establishment may have a stock of goods worth several times the assessor's estimate.

The results obtained through the use of our present assessing and listing machinery are far from satisfactory, though perhaps as satisfactory as the results in other states. Part of the deficiencies, perhaps most of them, are due to the weaknesses of the general property tax under modern conditions.

Administration of Tax Laws:

In most respects the tax laws of North Carolina are satisfactory; the weakness is the manner in which they are administered. Operating under the same laws, one county gets results far superior to those obtained in another county. It is largely a question of personnel and of office method. Tax inequities and iniquities will exist until (1) there is frequent, independent, expert assessing, and (2) there is a permanent or continuous record of taxables.

Need for Expert Assessing. All students of government agree that the assessing of property for taxation should be in the hands of men who are good judges of values, who have a robust moral courage, and who will be absolutely independent and impartial in their actions. It is not so easy to state how such men can be secured. In the first place most men dislike to serve as assessors. They realize that if they are too lenient they will be false to their best judgment and to their oath; if they are too severe they will make enemies. The pay is not commensurate with the inconvenience and unpleasantness involved. They may not display the right spirit, but nevertheless business men avoid assessing as they avoid jury duty. Where the position is filled through popular election,

the chances of getting a capable, disinterested man are even more remote, and the chances that the person elected will have pledges to fulfill are more probable. Popular election of assessors has little to commend it.

In North Carolina assessors are appointed by the county commissioners or by the county tax supervisor with the approval of the commissioners. While the law gives the county supervisor the power to appoint his assistants, he virtually never exercises this power independently of the commissioners. Each commissioner usually has one or two favorites who, he feels, ought to be given jobs, and after they are taken care of, the supervisor's recommendations are acceptable. There has been some complaint that assessors let their politics influence their work as appraisers. This is probably more imagined than true. Assessors are human and no doubt are influenced, quite unconsciously, by their likes and dislikes, but examples of deliberate partiality are certainly not common. Where there is partiality it is to a section or a township rather than to individuals. So long as assessing is left to local men, they will very naturally favor their home communities.

Furthermore, no man's judgment is infallible. Assessors should work in pairs, and it might be well to have a local man who knows the land and a stranger who is entirely disinterested. The supervisor could choose two assessors from each township, one to work in his own township and the other to work in another township. The county supervisor should go from township to township to see that the assessors are assessing according to a uniform standard.

To secure uniformity among the counties there might be state assessors going from county to county as representatives of the State Board of Assessment, though this is probably unnecessary so long as there is no state property tax.

Kentucky has recently passed an act which provides that before one can become a candidate for county assessor (called county tax commissioner), he must pass an examination set by the State Tax Commission, designed to test his general knowledge of the county and its property valuations, and the law and procedure governing his office.[31] This

[31] Gilbertson, *County Government in Kentucky*, p. 42.

is an excellent principle, which should be applied more in this state.

Need for Permanent Tax Roll. Ordinarily, there is nothing which approaches a permanent tax roll, because each year there is a new one. It is not cumulative, increasing in accuracy with the years. The names are not even arranged so as to permit comparison with the previous year's roll.

The local assessors and list-takers are usually men of limited ability, untrained for their work, and influenced more or less by political fears and personal prejudices. This is necessarily so, for well qualified men are not often available for thirty-day appointments. Quite often the appointments are given to men "who need the job." It is almost impossible to get efficient list-takers. They sit in each quarter of the township and receive such lists as are brought to them. They make little effort to discover unlisted taxables or to check against the previous year's abstracts. In the words of one official, "they do their work as quickly as possible in a haphazard way and come in for their pay." Sometimes they are paid so much a name, and the fee is so small as to discourage any effort to run down the stragglers.

The fault is not all with the list-takers, however. They have no maps, no accurate poll list, no record of land transfers, practically no aids of any kind to guide them. Quite often they receive no instruction or supervision. Fortunately these delinquencies are not so general as they once were. Several counties are now employing a full-time tax official or an auditor who gives much of his time to tax work. In Buncombe County the auditor employs a girl to do nothing else except to record land transfers in a tax register. Every deed that is recorded also comes to her, in order that the tax records may be corrected. In Edgecombe County the register of deeds sends a list of transfers to the auditor daily. Every time a deed is recorded in Mecklenburg County a card, especially designed for the purpose, is filled in for the tax clerk. Buncombe is also gradually getting its real estate mapped; the city of Asheville and one or two suburban townships are already done, and eventually the whole county will be mapped. The auditor in Edgecombe got insurance maps of the incorporated places in the county and

worked them over into real estate maps. As soon as an area is accurately mapped, it is possible to tell whether there are any lots that are not listed. The tax can then follow the land as well as the owners. It would be a great aid to the tax officials if whole counties could be accurately mapped, but the expense may be too great to justify it in the rural sections. It is certainly worth doing in the towns and cities. Of course the map is of no value unless the accompanying legend is kept constantly revised. A full-time tax official is never without work to do if he keeps up with land transfers, automobile sales, dog taxes, license taxes, tax delinquents, and so forth. He can save his salary, in most counties, discovering unlisted property.

In counties which do not have an auditor the office of county tax supervisor can be made one of real usefulness. A few counties have appointed capable men and made the office an important one. In too many counties, however, it has been treated only as another "job" to pass out to a faithful partisan. In such cases the appointments have usually been for sixty days, the men appointed have had little initiative, and no conspicuous improvement has resulted. If the commissioners would appoint a man of independence and ability and keep him employed twelve months in the year, he could be of inestimable service, probably saving his salary many times over. Most counties having an auditor do not need, in addition, a full-time tax official. In fact, where there is an auditor or county accountant, he usually serves as tax supervisor also. More than half of the counties employ no tax official at all except during the listing period. Efficiency in the tax service would not only produce more revenue, but it would improve the morale of the taxpayers, which is perhaps more important.

THE COLLECTION OF TAXES

North Carolina Deficient in Collecting Taxes:

The laxity and dilatoriness which obtains in the collection of taxes in this state is one of the most serious deficiencies in the taxing procedure. The lack of regularity and firmness on the part of the officials has produced an attitude of indifference on the part of many taxpayers. They have

lost fear of and respect for the tax laws. They pay "when they please" and it would not be far from the truth to say "if they please." At least, tax delinquency has become so common that it has lost its reproach, and there are in every county hundreds of taxpayers who wait to be coerced. It is needless to say that this situation has made tax collecting costly and a burden on the people who pay promptly and without coercion.

When Taxes Become Due:

The taxes (ad valorem and poll) become due the first Monday in October.[32] The sheriff or his deputy or the tax collector must maintain an office at the courthouse, or at least somewhere at the county seat, during October and November for the purpose of receiving taxes. He may, moreover, attend at least one day during the month of October at some one or more places in each township, on which days his regular office may be closed. The dates on which he will visit the local points and on which his office will be closed must be advertised fifteen days in advance.[33]

Furthermore, if any poll tax or other tax is not paid within sixty days after the same is demandable, it is the duty of the sheriff, if he can find no property of the person liable sufficient to satisfy the same, to attach any debt or other property incapable of manual delivery due or belonging to the person liable. The sheriff may garnishee wages due or to become due, and any employer who, on demand or request made, refuses to give to the tax collector a list of his employees liable for taxes, is guilty of a misdemeanor.[34]

Tax Sales:

After the legal period for paying taxes has elapsed, the taxes may be collected by duress. The sheriff (or tax collector) is permitted to seize and sell enough of the delinquent taxpayer's property to satisfy the tax. The law requires that the personal property of a taxpayer be levied upon and sold for the satisfaction of his taxes before resorting to his real estate, if sufficient personalty subject to levy and sale

[32] *Public Laws of 1927*, chap. 213.
[33] *Consolidated Statutes*, 7996.
[34] *Ibid.*, 8004.

can be found. It further states, however, that "it shall be incumbent upon the taxpayer, mortgagee, or other lienholder on taxpayer's realty, if said mortgagee or other lienholder has notified the sheriff that he holds such mortgage or other lien, to point out to the sheriff personalty out of which the taxes may be made, or else such taxpayer shall forfeit his rights under this section (that is, to exhaust personalty first) and his real estate shall be subject to the lien for taxes as if no other property had been listed by him."[35] The method of selling personalty for taxes is governed by the general laws regulating levy and sale under execution.[36]

As a general practice sheriffs have not been levying on personal property before advertising the land, because it is an unpleasant thing to do, and because the lenient and irregular practices which have prevailed in the sale and redemption of land have made the sale of land the lesser hardship. As they have been conducted, land sales have amounted to little more than granting an extension of time to the taxpayer. The new law, which will be explained presently, is designed to remedy this evil.

Heretofore the date fixed by law for the sale of real estate for taxes has been the first Monday in May, with the proviso that the commissioners might postpone the sale until the first Monday of any subsequent month, after giving the required notice.[37] As a matter of practice sales have been held as much as a year late, and few counties have been holding them regularly on the first Monday in May. The new law provides that real estate shall be sold for taxes on the first Monday in June, and that there shall be no extension of time for such sale, except that the sale may be continued from day to day until completed.[38]

Before any real estate shall be sold for taxes, the sheriff must give public notice of the time, place, and cause of such sale by advertisement at the courthouse door and in some newspaper published in the county, if there be any, for four successive weeks immediately preceding the day of sale. Such advertisement must set out a list of the land to be sold

[35] *Consolidated Statutes*, 8006, amended 1927, chap. 221.
[36] *Ibid.*, 8007.
[37] *Consolidated Statutes*, 8012, amended 1927, chap. 213.
[38] *Ibid.*

and the amount of taxes and costs due by each delinquent owner, giving his name.[39]

All sales of real estate for taxes must be at public outcry to the highest bidder. All the advertised real estate of each delinquent must be sold at the same time as one body, and no bid therefor received unless sufficient in amount to discharge all the taxes due by the delinquent, together with all costs and expenses of sale. If no such bid be received the county shall be deemed the purchaser, and the sheriff shall so record it in his sales book.[40] This book shall describe the property sold, give the name of the delinquent in whose name it was listed, the amount of the taxes, costs and expenses, the name of the purchaser, and the amount of his bid. At the time of the sale the sheriff shall give to the purchaser a written certificate.[41] When the county is the purchaser the sheriff shall issue a certificate to the county.[42] At any time the county commissioners may assign such certificates to any person wishing to buy, for the amount of the tax, the costs and the accumulated interest.[43] The assignee obtains only such interest as the county (assignor) possessed, namely a right to foreclose.[44]

Land sold for taxes may be redeemed any time within a year after the date of the sale by paying to the purchaser the sum mentioned in the certificate, with interest thereon at the rate of 20 per cent, together with all other taxes subsequently paid.[45]

The New Law. Under the law which has been operative until this year (1927) a purchaser of real estate at a tax sale was entitled to a deed to the property, provided it was not redeemed within one year, and provided he complied with the legal requirements as to serving notices and advertising. Actually it was rare for an individual to acquire a deed to property in this way. The process was so long and involved and the likelihood of error so great that few people would even bid on land at a tax sale. Most people rather look upon it as unethical even to attempt to acquire a fellow-citizen's home or land in this manner. As a result of the failure of

[39] *Consolidated Statutes*, 8014.
[40] *Ibid.*, 8015.
[41] *Ibid.*, 8024.
[42] *Ibid.*, 8026.
[43] *Ibid.*
[44] McNair *v.* Boyd, 163 N. C. 478.
[45] *Consolidated Statutes*, 8038.

individuals to bid on land offered at tax sales, the county became the purchaser.

When the county was the purchaser the process of redemption was the same as though the purchaser had been an individual, but if the delinquent taxpayer failed to redeem his land within the year allowed for redemption, the county did nothing. There has been confusion as to what it had a right to do. The court formerly ruled that it became a mortgagee and must collect by foreclosure. Later it ruled that a county may purchase land at a tax sale and take a deed without resorting to foreclosure. As a matter of practice it did neither. It carried the back taxes on its books in the hope that it might eventually collect. In case the property was sold the new purchaser would have to pay as much as five years' back taxes in order to clear his title. Quite often the record of tax sales was so loosely kept that, with a change of administration, the record was lost or became unintelligible and the delinquent taxpayer was that much ahead.

Under the new law[46] tax deeds are no longer to be granted, but

> Every county, person, firm or corporation, private or municipal, who has purchased any lands or interest in the same at any tax sale, as evidenced by sheriff's certificate of sale, or becomes a holder of any sheriff's certificate of sale . . . shall have the right of foreclosure of said certificate of sale by civil action, and this shall constitute his sole right and only remedy to foreclose the same.
>
> When by mistake or wrongful act of the sheriff real estate has been sold on which no tax was due at the time, or whenever land is sold in consequence of error in describing said land in the tax receipt, the county or other municipal corporation shall reimburse the purchaser by paying to him the amount of principal and costs by him expended in such purchase, with interest thereon at 6 per centum per annum; and the sheriff shall be liable to the county or other municipal corporation, upon his tax bond, for all amounts so expended by it, or the purchaser and assigns may recover such amount and interest directly from the sheriff in an action upon his tax bond. But the sheriff and his sureties in all

[46] *Public Laws of 1927*, chap. 221.

such cases as are provided for in this section shall be liable only for the wrongful acts of the sheriff and his deputies.

The purchaser at a sale for taxes, and his heirs and assigns, shall have a lien on the real estate by him purchased at such sale for the amount of the purchase money paid and all interest, penalties, costs, and charges allowed him by law; and if, after his purchase, he pays any taxes or assessments levied upon or which constitute an encumbrance upon such real estate, whether assessed before or after such purchase, he shall have a lien for all sums so paid out and for all interest, penalties, costs, and charges allowed him by law.

The last section of the act is too long to be quoted here in full, but in substance it provides that every holder of a sheriff's certificate of sale of real estate for taxes shall have the right of lien against all real estate described in the certificate as in the case of mortgage, and shall be entitled to a judgment for the sale of such real estate for the satisfaction of whatever sums may be due him. Relief shall be afforded only in an action in the nature of an action to foreclose a mortgage, and such action shall be governed in all respects, as near as may be, by the rules governing actions to foreclose a mortgage. When the county is the holder of any certificates of sale, it must bring action to foreclose the same within eighteen months from the date of the certificate. The certificates of sale shall bear interest at the rate of 20 per cent on the entire amount of taxes and sheriff's cost for a period of twelve months from the date of sale, and thereafter at the rate of 10 per cent until paid or until the final judgment of confirmation is rendered. When a certificate of sale is held by an individual and he fails to institute action within eighteen months from the date of sale, he is entitled to only 6 per cent thereafter. He is entitled to 20 per cent on his investment for the first eighteen months.

In any action to foreclose, the cost is to be taxed as in any other civil action, and is to include an allowance for the commissioner appointed to make the sale, which shall not exceed 5 per cent of the amount at which the land is sold, and one reasonable attorney's fee for the plaintiff.

All certificates of sale evidencing purchases by counties must immediately, upon being allowed as a credit in the

settlement with the sheriff, be delivered to the county accountant, county auditor, or other clerical officer of the board, and it becomes his duty to collect the same. Such officer shall call upon the county attorney to conduct the action to foreclose the certificate of sale, and it is the attorney's duty to prosecute the action as vigorously as may be necessary to obtain early final action. After the institution of an action by the county the taxpayer has no right of redemption except upon the payment of the full tax, interest, and other sums, and all cost and allowances. The county board has no authority to remit or reduce the interest due under the certificate of sale, or otherwise interfere with the action to foreclose. No action to foreclose a certificate of sale may be instituted after the expiration of three years from the date of same.

This fundamental change in the manner of dealing with delinquent taxpayers who own real estate simplifies and clarifies what has been a confusing and unsatisfactory procedure. The substitution of a lien for a possible tax deed is fairer to the delinquent and more to be desired by the purchaser. Now if a taxpayer's land is sold to satisfy taxes, he does not lose the whole worth of the property, but instead he receives the difference between what the land brings and the amount of the tax, interest, and costs. The change ought to be beneficial to the county, first because it will stimulate individuals to purchase the certificates of sale, and second, when the county is the purchaser it can get its money within a reasonable period of time.

The Sheriff as Tax Collector:

Since colonial days it has been the custom in North Carolina for the sheriff to serve as tax collector. Possibly the practice was introduced on account of the rebellious attitude of the early settlers toward taxes, but more likely it was adopted because the sheriff had been a tax collector in England.

If the original motive for making the sheriff tax collector was to strike fear into the hearts of the taxpayers, it has had just the opposite effect. He becomes so universally known and mixes with the people on such intimate terms that they lose

their fear and awe of him. More than that, he is an important political figure, and he uses the tax-collecting prerogative to advance his popularity. His is the best paying and the most respected office in the gift of the people. A man who has once served as sheriff is affectionately called "sheriff" the rest of his life. In return for honoring him, the people expect the sheriff to bestow favors. They expect him to make contributions to every conceivable cause, sign notes, be easy with the poor fellow who gets caught in the clutches of the law, and most of all, give a man plenty of time to pay his taxes. One frequently hears the remark, "Mr. ———— is a fine sheriff; he never presses me for my taxes."

Most of the sheriffs of the state fall into one of two classes —the politician type, primarily interested in collecting taxes and ready to turn the police work over to deputies, and the policeman type which enjoys the police work but is bored with the clerical work incident to the collection of taxes. The combination of duties is so incongruous that it is rare when a person qualifies both as a police officer and as a financial officer.

Sheriffs are constantly defaulting, sometimes because they use their office for political purposes but quite as often because they are content with loose, haphazard bookkeeping. Untrained men suddenly find themselves entrusted with the handling of large sums of money, with no accounting for months or years at a time. With a multiplicity of debits and credits to be reckoned, it is not surprising that they become confused, overestimate their net income, and innocently use public funds. The lack of a proper accounting system is more to be blamed than the official, but, even so, it is unwise to entrust tax collecting to an officer chosen for another purpose and possessed with other qualifications than those of a bookkeeper. Legislation passed in 1927 requires that collections be deposited daily, reports made monthly, and the taxes all collected by July 1.[47] There ought to be less defaulting hereafter.

The repeated failure of the sheriff to handle the taxes satisfactorily has led several counties to separate the work and elect or appoint an independent tax collector. Among

[47] *Public Laws of 1927*, chap. 213.

the counties which have made this change are Buncombe, Harnett, Polk, Madison, and Moore.

Simply to divide the work and elect a separate tax collector is not likely to improve conditions much, for the politician type who has been running for sheriff would then run for tax collector. The tax collector should be appointed by the commissioners. They should appoint a person who will press collections without fear or favor, and one who has the ability to keep his accounts in a satisfactory manner. There is no reason why he should be paid a large salary, for it requires no highly trained person. He should probably be deputized so that he can serve papers on delinquents. Incidentally, one of the best tax collectors in the state is a woman, a deputy sheriff in Mecklenburg County. In fact, there are several instances where women serving as clerks to the sheriff have displayed real ability as tax collectors.

Compensation of Tax Collectors:

It has been costing an unreasonable amount to get taxes collected in North Carolina. There is a general statute fixing the commission of tax collectors at 5 per cent on the first $50,000 and 2½ per cent on the balance, with the collector paying his own expenses.[48] This commission was not excessive so long as taxes did not exceed $100,000, but when they become three or four times that amount the commission becomes too lucrative. Consequently half or more of the counties have reduced the compensation, either by putting the official on salary or by establishing a smaller commission. There is no uniformity. In Rutherford County the sheriff receives a flat 2 per cent, paying his own deputies. The taxes amount to about $375,000 a year. In Alamance the sheriff receives a straight salary of $3,000, paying no deputies or expenses. In Polk the same person serves as tax collector and treasurer. He receives $3,000 and pays his own expenses. In Edgecombe the sheriff receives a commission of 5 per cent on the first $50,000, 2½ per cent on the next $150,000, and 1 per cent on the balance. The taxes amount to about $500,000. In Surry the sheriff receives $5,000 and his fees and pays his own deputies. There is no

[48] *Consolidated Statutes*, 8042.

serious objection to compensation on a commission basis. In fact, it may stimulate collections.

Collection Costs Excessive:

In order not to penalize the prompt taxpayers by making them share the cost of collecting delinquent taxes, it would seem fairer to put the cost on the delinquents alone. This method is in use in New York and operates as follows. The tax collector adds his commission to the face of the tax, 1 per cent on taxes paid within thirty days and 5 per cent thereafter and costs if there has to be a forced collection. The tax collector must pay to the treasurer the full amount of the tax charge, less the bona fide errors and insolvents.

In Virginia, South Carolina, Iowa, and many other states taxes are collected by the treasurer. It would be better to say "received" by the treasurer, for in most of these states the taxpayer comes to the courthouse and pays his tax. An Iowa writer says, "No demand of taxes is necessary in this state. It is the duty of every person subject to taxation to attend at the office of the county treasurer and pay his taxes. Approximately 98 per cent of the general taxes levied are collected within the year in which they are due."[49] Similar reports come from other states. The treasurer of a Virginia county reports 99½ per cent of the taxes collected. What is the situation in North Carolina? After sheriff's commission, uncollected taxes, etc., are deducted, hardly 90 per cent of the taxes charged ever reach the treasurer. The writer selected at random three North Carolina counties. In one county where the sheriff is paid a salary the treasurer had received on March 1, 1925, only 94 per cent of the 1923 tax charge and 59 per cent of the 1924 charge. In another county on November 1, 1925, the treasurer had received 90 per cent of the net charges for 1923 and 1924. In the third county the commissions of the sheriff as tax collector and treasurer amount to about $10,000 a year, yet when he received the 1925 tax books he was more than $100,000 behind with the collections for previous years. North Carolina counties are paying liberal commissions or salaries to the tax collectors, but they are not getting

[49] Porter, in *County Government and Administration in Iowa* (ed. Shambaugh), p. 495.

service. The fault is partly with the sheriff or tax collector, partly with the taxpayers, but most of all with a system which encourages laxity and delay.

The taxpayer has a right to demand that a large part of his tax dollar shall reach the treasurer. The cost of collecting ought not to exceed 1 per cent. When the cost exceeds that margin it should be borne by the delinquents themselves. The fiscal year begins July 1; taxes become due October 1; unless there is a balance the expenses of this three months' interval must be met by short-term loans. This is unfortunate, but it is desirable that the fiscal year conform with the school year, and it is hardly possible to advance the tax-collecting period. Farmers do not market their crops until October or later. Cotton and tobacco may not be marketed until December or January. To demand the payment of taxes too early is unfair to the farmers; yet if the date is placed later than October it imposes a burden on the county.

In order to secure substantial revenues in October to pay teachers' salaries and retire the short term notes negotiated during the summer, the corporations and large taxpayers must be induced to pay. A slight discount will usually induce them to do so. In order to keep down the cost of collecting taxes, they should be payable at the courthouse without personal notification, or by mail after requesting and receiving a statement. The period for paying should be more restricted and the penalty for paying late more severe. Those who have to be coerced should be required to pay accordingly. Collections should cease and a final settlement be made by the collector in the manner and at the time prescribed by law. Extensions may be justified in times of unusual depression, but ordinarily they are no benefit to any one. They are granted quite as often for political as for economic reasons.

Discounts and Penalties:

Previous to this year there has been a law[50] permitting any board of county commissioners to prescribe a discount for the prompt payment of taxes and a penalty for delay,

[50] *Machinery Act, 1925*, sec. 78.

provided the discount or penalty did not exceed one-half of 1 per cent per month nor the entire penalty exceed 1½ per cent. The 1927 Machinery Act does not carry forward this provision, and the attorney general has ruled that it is therefore inoperative.

Even this slight penalty, which is no more than 6 per cent interest, has never been universally applied. Many counties have preferred to grant no discounts and impose no penalties; hence there has been no inducement for a taxpayer to pay in October when he may as well wait and pay in April. A few counties have secured from the legislature permission to adopt other schedules. For instance, Gaston County has been granting 2 per cent discount in October and a 1 per cent discount in November, and imposing a penalty of 1 per cent in January, 2 per cent in February, 3 per cent in March, and 4 per cent in April.[51]

In few, if any, other states is the period for paying taxes so extended and the penalty for delinquency so slight. In Iowa taxes become delinquent after two months and then draw interest at the rate of 1 per cent per month. In New York a penalty of 5 per cent is imposed after thirty days, and in Louisiana a penalty of 10 per cent after thirty days. In Tennessee taxes become due December 1, and delinquent March 1, after which there is an interest charge of 7 per cent in March, 8 per cent in April, 9 per cent in May, and so on. The following February any taxes still unpaid are put in the hands of an attorney and foreclosure proceedings instituted. In Virginia taxes become due November 1 and after December 1 a 5 per cent penalty is added. In Kentucky a 6 per cent penalty is added after the first day of delinquency.

Experience will demonstrate what schedule of discounts and penalties will produce the best results, but North Carolina counties could certainly save thousands of dollars by adopting a more severe and a more rigid schedule. The counties will have to continue to borrow in anticipation of taxes so long as they give the taxpayers six or eight months to pay, with little or no interest charge imposed. The following calendar is suggested:

[51] *Public-Local Acts of 1925*, chap. 175.

October	First month of collecting	1 per cent discount
November	Second month of collecting	Par
December	Third month of collecting	Par
January	Fourth month of collecting	4 per cent penalty
February	Fifth month of collecting	5 per cent penalty
March	Sixth month of collecting	6 per cent penalty and costs
April	Seventh month of collecting	7 per cent penalty and costs
May	Eighth month of collecting	8 per cent penalty and costs
June 1	Sell real estate	
July 1	Sheriff or tax collector make final settlement	

It is suggested that taxes paid during October and November be paid without personal notification, except that it be the duty of the tax collector to furnish a statement to any taxpayer requesting the same. Furthermore, a statement that taxes are due, and the schedule of discount and penalties should be well advertised at the beginning of the tax-collecting period, and again before the penalty is applied.

Sheriff's Settlement:

One of the greatest evils in the administration of county government has been the failure of the sheriff to collect the revenue promptly and fully and turn it over to the treasurer. He has even failed in scores of cases to make any adequate final settlement. The sheriff has seemed to entertain the notion that the tax money was for his own use until he was required to turn it over, and he has generally deposited taxes to his personal account. Many sheriffs have made no attempt to keep tax money separate from their own money, and naturally when the time came for final settlement they were astonished that they owed the county so much. Quite often they have owed far more than they were able to pay. Every year has witnessed several defalcations.

The law has been adequate but it has not been enforced. One law prohibited the sheriff or tax collector to retain over $3,000 for more than ten days. Another law stipulated a regular monthly statement to the board of commissioners.

Another required a final settlement on the first Monday of May of each year. Finally, the law has explicitly forbidden the delivery of a second set of tax books to a sheriff unless he had made complete and final settlement for the previous year's taxes. Yet all of these laws have been ignored both by the sheriff and the commissioners.

Cases might be cited where sheriffs have continued to collect taxes for four or six years without an annual settlement. Mention could be made of sheriffs who have been out of office several years and have never made a final settlement. In some counties taxes are collected months after the time set for final settlement, and in at least one county there was, a few months ago, a large volume of uncollected taxes three or four years past due.

The New Law. The sheriff or tax collector is required, under the recent act of the legislature,[52] to submit at each meeting of the commissioners during the tax collecting period a complete statement of all taxes since the last meeting of the board. On the first Monday in May he is required to report in full the uncollected taxes for the current tax year, and the county commissioners must thereupon order sale of all land for taxes, where the taxes have not been paid, to be made on the first Monday in June. At the same time he is required to make up a list of taxes due by taxpayers who list no land for taxes.

On the third Monday in June, the sheriff or other tax-collecting officer is required to report to the commissioners his action with respect to tax sales and collections of taxes of taxpayers who list no land for taxes under oath. The sheriff or tax collector is required at that time to make oath that he has made diligent effort to collect taxes out of the personal property of these taxpayers, or by other means open to him for the collection of such taxes. He is also required to report such other facts with respect to these landless taxpayers as he may possess. The board must thereupon enter upon its minutes the names of such of these taxpayers as are found to be insolvent and deduct the amount of their taxes in the final settlement with the sheriff or tax collector.

[52] *Public Laws of 1927*, chap. 213.

The fiscal year ends June 30, and on the first Monday of July the sheriff or other tax-collecting officer is required to make final settlement. The basis of settlement is made very specific. The law states:[53]

> On the first Monday of July the sheriff or other tax-collecting officer shall make a full and complete settlement with the county or its special subdivisions. In such settlement, the sheriff or other tax-collecting officer shall be charged with (*a*) all sums due by the tax list for county purposes, (*b*) all sums due by the tax list for all other purposes, (*c*) all sums due for corporation excess, (*d*) all other sums to be collected by the said sheriff or other tax collecting officer, and shall be allowed: (*a*) sums receipted for by the county treasurer or other county fiscal agent, (*b*) releases allowed by the governing body as prescribed by statute, (*c*) tax sales for which certificates of sale in duplicate have been executed and delivered to the county, (*d*) insolvent list allowed as hereinbefore provided, (*e*) commission, if any, allowed such sheriff or tax collector. The settlement made with such sheriff or tax collector shall be entered in full upon the minutes of such body.

It is necessary to remind the reader that the law quoted here was enacted by the last General Assembly and is just now going into operation. It is too early to tell whether it will be generally and rigidly enforced. We may presume that it will be; yet we cannot overlook the fact that the tax laws which have preceded it have not been enforced. There are penalties attached for violation, but such penalties are contingent upon conviction in the court, and if nobody brings suit, officers and citizens can continue to violate the law with impunity.

In order for the reader to understand the background of current legislation, it has seemed necessary to describe existing practices as well as the improvements which the new laws are designed to effect.

[53] *Ibid.*, sec. 6.

Chapter VI

FISCAL CONTROL IN THE COUNTY

CUSTODY OF FUNDS

The County Treasurer:

Except in those counties which have appointed banks as fiscal agents, there is in each county a treasurer elected by popular vote for a two-year term. He is custodian of all county funds and of the several school funds.

It is the duty of the county treasurer "to receive all moneys belonging to the county, and all other moneys by law directed to be paid to him; to keep them separate from his own money, and to apply them and render account of them as required by law."[1] The law requires that his books shall show the date, amount, and source of every receipt, and the date, amount, payee, and object of every disbursement. They must show the total amount received and the total amount paid out during the fiscal year for school purposes, general county purposes, for jury fund, and for each special purpose, all separately kept, so that at all times his books shall correctly and accurately show the condition of each account. The law further requires that his account of expenditures for general county purposes shall show separately the amount expended each year for each of the following purposes: county home, indigent persons, jail, workhouse, courthouse, bridges, insolvent fees, courts, and such other special accounts as the board of commissioners may require. It is the duty of the treasurer to call on the sheriff, the clerk of court, and other officers having county money in their hands to pay the same to him. In case of the failure or refusal of such official to account and pay over to the treasurer amounts due, the treasurer is required to report the facts to the board of commissioners, who may forthwith bring suit on the official bond of such delinquent

[1] *Consolidated Statutes*, 1393.

officer.[2] It is the treasurer's duty to keep an exact account of all fines, penalties, and forfeitures paid over to him, giving the date of payment, by whom paid, from whom collected, and in what case. Finally, the treasurer must be prepared to exhibit his books to an auditing committee at any time. If the auditing committee should find a deficit it is required so to report to the board of commissioners, whose duty it is to institute proceedings in the superior court against the treasurer for violation of his official duties.[3]

It is unlawful for the treasurer to pay a claim against the county unless the same has been audited and allowed by the board of commissioners. It is unlawful also for him to purchase a claim against the county at less than its face value and charge the county the face value. The law states that any treasurer who is concerned or interested in such speculation shall forfeit his office.[4]

The county treasurer, before entering upon the duties of his office, must give bond with three or more sufficient sureties, to be approved by the board of commissioners. The amount of the bond shall not exceed the amount of the county and local taxes assessed during the previous year, but the board at any time, by an order, may require the treasurer to renew, increase, or strengthen his bond. Certain counties have special acts fixing the maximum or minimum limits of the bond. A failure to file sufficient bond automatically vacates the office.[5] Banks acting as depositories have not always been bonded adequately, and several counties have suffered losses as a result.

There is no standard compensation for treasurers. A number are paid on a commission basis. For instance, Ashe County pays the treasurer ¼ of 1 per cent for receiving and 1¼ per cent for disbursing county funds, while the school board pays 2 per cent for the two operations. McDowell County pays 1½ per cent for disbursing. In Dare County the commissioners may fix the treasurer's commission at not less than 2 per cent or more than 3 per cent. The commission basis of compensation is less general than it was a few years ago, for the reason that the swelling volume of taxes made the commissions too generous. Sometimes the

[2] *Ibid.*, 1402. [3] *Ibid.*, 1393. [4] *Ibid.*, 1394. [5] *Ibid.*, 1388.

county treasurer was receiving more for handling the school fund than the superintendent of schools was receiving for administering it. Most of the counties are now paying salaries varying from $300 to $2,000 a year. The salary bears little relation to the service rendered. Some of the treasurers are keeping the county accounts in excellent shape and are really earning more than they are paid. In a great many cases, however, the treasurership is held by a person who is dear at any price. He is totally unqualified, gets his accounts confused, and makes it necessary for the county to employ an auditor to find out where it stands.

There is quite a tendency to give the treasurership to some deserving person—a crippled ex-service man, a widow, or some other person who has suffered misfortune. While this is a very commendable spirit it does not always make for efficiency and safety. The office is looked upon as one which anyone can fill. It is true that the duties are simple if nothing more is done than to keep a cash book record. Most of the county treasurers are faithful, honest, well-meaning, but often their bookkeeping is so elementary as to be almost useless.

A treasurer, to be of any real service to the county, must possess some knowledge of accounting. He should at least understand double-entry bookkeeping and control accounts. He ought to know how to set up and close a series of accounts and how to prepare a balance sheet. Many of the county treasurers could be taught in a few days, or a few weeks at most, how to keep their books in a satisfactory manner, but ordinarily there is no one to instruct them. Others do not possess the capacity or the inclination to learn. Occasionally an unscrupulous person gets elected to the treasurership, but more often the treasurer's only fault is his incompetence. So long as the position is filled by popular election some unwise selections may be expected.

Banks as Financial Agents:

In 1913 an act was passed by the General Assembly authorizing and empowering the boards of commissioners in twenty-odd counties to abolish, in their discretion, the office of county treasurer and appoint in lieu thereof one or

more solvent banks or trust companies.[6] The act provided that such bank or trust company should be appointed for a term of two years, and should be required to execute the same bonds for the safe-keeping and proper accounting of county funds and the faithful discharge of its duties as county treasurers had theretofore. It could not charge nor receive any compensation for its services, other than such advantages and benefit as might accrue from the deposit of the county funds in the regular course of banking. Since 1913 many other counties have secured special acts permitting them to take the same step. Some of the counties which abolished the office of county treasurer have later restored it, but today there are forty-two counties in which banks act as financial agents.

The motive which has prompted the substitution of a bank for an elective treasurer has been to secure more systematic bookkeeping and to save the treasurer's salary. Both of these objects have been realized, but there are certain drawbacks to the system. (1) The exclusive use of county money is a decided advantage to a bank and if there are two or more banks in a county there is a keen rivalry for the appointment. This has sometimes led banks to take a prominent part in advancing the candidacy of certain men for the board. (2) If a bank has the free use of county deposits the reward may be too great for the service rendered; the bank should pay interest on the daily balances as well as on time deposits. There are counties in North Carolina where the interest on bank balances has amounted in a single year to over $10,000. (3) The appointment of a bank as treasurer has been criticized on the ground that it concentrates county funds in one place, thus inviting disaster in case the bank should fail. This is hardly a valid argument, for no bank should be permitted to serve as county depository unless it is bonded. On the whole, the substitution of a bank for an individual treasurer has not been entirely satisfactory, though in some instances it has worked well. Much depends on the quality of the outside accounting. If the county has an auditor to do all the accounting and

[6] *Public Laws of 1913*, chap. 142, and of the Extra Session, 1913, chap. 35; see also *Consolidated Statutes*, 1389.

distribute the funds, the bank becomes little more than a depository and the arrangement works very well. In that case it matters little whether the bank or the auditor be designated as treasurer.

After all, the objective is the safe-keeping and proper accounting of public funds. Popular election may provide a treasurer who is entirely trustworthy but not necessarily competent. Probably the office should be filled by appointment of the commissioners. They may appoint a banker or a bank clerk, or any competent accountant. They may give the responsibility to the county auditor, the tax collector, or one of the other county officers. In New Hanover and Lincoln counties the auditor acts as treasurer, in Polk County the tax collector, and in Alamance County the secretary to the county manager. In Edgecombe County a bank acts as treasurer but the auditor keeps a duplicate set of books. All of these arrangements seem to be giving satisfaction. The most common practice in other states is to combine the duties of treasurer and tax collector. This is the case in Virginia, South Carolina, Delaware, Iowa, and other states. It is a logical combination, workable in North Carolina if the position is filled by appointment. It is not a satisfactory arrangement for the sheriff to act as treasurer as he does in a few counties.[7]

New Regulations Regarding Depositories:

The new Fiscal Control Act contains the following provisions in regard to the depositing of county funds:

> Every public officer or employee whose duty it is to collect or receive any funds or money belonging to any county or subdivision thereof shall daily deposit the same with the county treasurer or in some bank, banks, or trust company designated by the board of commissioners, in the name of the county and of the fund to which it is applied, and shall report the same daily to the county accountant by means of duplicate deposit tickets signed by the depository. If there is no treasurer or designated depository in the county, then the board of commissioners may allow such deposits to be made every three days in some depository outside

[7] The sheriff acts as treasurer in Alleghany, Ashe, Chatham, Clay, Duplin, Graham, Macon, Montgomery, Pender, Rockingham, Scotland, Stokes, and possibly other counties.

of the county. If such officer or employee collects or receives such public moneys for a taxing district of which he is not an officer or employee, he shall, during Saturday of each week, pay to the proper officer of such district the amount so collected or received during the current week, and take receipt therefor.

The board of commissioners is hereby authorized and empowered to select and designate annually, by recorded resolution, some bank or banks or trust company in this State as an official depository of the funds of the county, and the county commissioners shall require of such depository a bond in some surety company authorized to do business in North Carolina in an amount sufficient to protect such deposits, but in no event not less than the average daily bank balance of the county for the preceding year; but the board may at any time require an additional bond, in its discretion.

It shall be the duty of the board of commissioners to provide by recorded resolution for interest to be paid on public deposits at a rate to be determined by the board of commissioners. It shall be unlawful for any public moneys to be deposited by any officer, employee, or department, in any place, bank, or trust company other than those selected and designated as official depositories. Any person or corporation violating the provisions of this section or aiding or abetting in such violation shall be guilty of a misdemeanor and punished by fine or imprisonment, or both, in the discretion of the court.[8]

EXPENDING COUNTY FUNDS

Unified Control Essential:

One of the first principles of efficiency in any business organization is unity in fiscal control; yet this principle has been seriously violated in county government. The school fund has been turned over to the school board and expended under the direction of the superintendent of schools. In many counties the road fund has been turned over to the highway commission and expended independent of any control by the county commissioners. It has not been uncommon to find capable county auditors, carefully safeguarding expenditures from the general fund, denied any control over the road and school funds. As a result there have been deficits in these funds which the county auditor could not anticipate nor forestall.

[8] *Public Laws of 1927*, chap. 146, sec. 19.

Decentralization of control has not stopped with the several boards. Most of the individual officers have been practically independent of the board of commissioners. Each has been spending county funds on his own initiative, rendering no statement until after the debt has been incurred. The sheriff, the register of deeds, and the clerk of court have bought supplies for their respective offices and submitted the bills to the board. In the same manner the superintendent of the county home has bought supplies for that institution, the jailer for the jail, and sometimes the janitor for the courthouse. Even were every officer a shrewd and honest buyer, a loss would be entailed because of retail buying. Unfortunately, not all officials are discriminating and disinterested buyers. The history of local government everywhere is replete with incidents of abuse and stupidity in purchasing.

Although it is illegal for a person while serving as a public official to trade with himself as a private citizen, it is done a great deal, directly or indirectly. Quite often the sales are made in another's name or through a third party. There is also much trading among the officials themselves, a practice which if not illegal is at least dishonorable. Scores of examples might be mentioned, but two or three will suffice. A certain register of deeds was an automobile salesman, and the commissioners bought a truck from him. A road superintendent furnished his tenant with several teams of mules and employed the tenant to work them on the county roads. One of the most serious abuses of power that have come to light is a case where the board negotiated a loan of $100,000 and deposited the money in an unsound bank in which the members were stockholders. A few weeks later the bank failed and the county lost its money. One of the most amusing illustrations of careless purchasing is that of a board which unwittingly paid for wood cut from the county farm by the superintendent of the county home and delivered to the jail.[9] Centralized purchasing would prevent such losses.

[9] County Government Studies, Department of Rural Social-Economics, University of North Carolina.

The Purchasing Agent:

A few counties, including Buncombe, Durham, and Forsyth, employ a purchasing agent. His duties may be solely those indicated by his title, or he may have other duties. In either case he acts as the agent of the commissioners in making all purchases for the county. Such supplies as can be purchased wholesale to advantage are so bought and distributed by requisition. When any officer needs an article which is not carried in stock, he likewise makes out a requisition, gets it approved by his superior, and presents it to the purchasing agent. The latter buys the desired article in the best market. If it is an article costing more than a certain fixed amount, say $100, he asks for bids, and buys of the lowest bidder, quality being considered.

There can be no doubt as to the advantage of centralized buying if the volume of purchases is large. In few North Carolina counties is the volume large enough to demand a full-time purchasing agent. Quite frequently the auditor is given the duties of a purchasing agent; sometimes one of the commissioners assumes these duties. The main advantages of centralized buying are the curtailment of patronage and the opportunity to buy at wholesale, save the discounts by paying cash, and buy in the cheapest markets. The vendors soon learn that a wide-awake purchasing agent knows the markets and that they must give him rock-bottom prices. This is sometimes quite a shock to those salesmen who expect to find county officials so naïve as to bite on any bait. In fact, the ordinary official is inexperienced, uninformed, and is easily misled by smooth-tongued salesmen.

The need for centralized purchasing was strongly emphasized in the recommendations of the County Government Commission to the governor, and by him transmitted to the General Assembly. As a result, the act which was passed in the interest of improved methods of county government contains this provision:

> It shall be the duty of the board of commissioners to provide for the purchasing of supplies for the different departments of the

county government in such manner as may prevent waste and duplication in purchasing, and may obtain the advantage of purchasing in larger quantities. To that end the board may designate some competent person, either a member of the board or some other officer or agent of the county, as purchasing agent whose duty it shall be to superintend the purchasing of all material and supplies for the county, and the board may prescribe the duties of such purchasing agent.[10]

Care of County Property:

The Commission likewise pointed out the failure of the counties to take proper care of their physical property, and the need for delegating this responsibility to some particular officer or agent. The lack of any regular and systematic inventory and the lack of carefully drafted balance sheets each year have made it impossible for the county commissioners to know at what rate machinery and other property were depreciating. The neglect of trucks, tractors, and road machinery, and the abuse of courthouses, schoolhouses, and other public buildings have been conspicuous. Except for an occasional, perfunctory examination by the grand jury, there has been no one responsible. Quantities of county supplies might be stolen and the loss never detected.

Following the recommendation of the Commission the General Assembly included in the act mentioned above this provision:

> It shall be the duty of the board of commissioners to provide for the regular inspection of and care for all the property of the county, including buildings, machinery, and other property used for county purposes, and the board may designate some member of the board or some other officer or agent of the county, whose duties it shall be to make a regular inspection of the county property and report the condition of the same at such times as the board may direct.[11]

It is probable that in most cases it would be well for the same person to serve as purchasing agent and as custodian of county property, or at least of the movable property. In the average county neither task would keep a man busy.

[10] *Public Laws of 1927*, chap. 91, sec. 12.

[11] *Ibid.*, sec. 13.

In many counties it would not require a full-time officer to perform both functions. The work could be delegated to one of the commissioners or to some other official. These two simple improvements in county administration need cost very little, but the potential savings are tremendous.

Contracts:

The losses suffered by a county in its purchases are slight compared to the swindles perpetrated by unscrupulous contractors, the commissioners often being innocent victims. The average board of commissioners is made up of farmers, merchants, or small-scale business men. They are men of good judgment in their own fields, but they are not qualified to estimate the cost of a bridge, a road, or a public building. No body of laymen would be. They must employ an engineer or an architect to prepare the specifications, and then let the contract, ordinarily to the lowest bidder. If there are several bidders, each delivering a sealed bid, it is presumed that the bidders are rivals in earnest competition; but such is not always the case. Sometimes the bidders may enter into agreements and the higher bids be only decoys, the lowest being agreed upon and that far too high. Sometimes an engineer or architect may be in collusion with the contractor. Sometimes an honest architect may not be diligent in seeing that his specifications are followed. A highway engineer told the writer that he could make or break a contractor without altering a word of the specifications. At any rate, the commissioners are innocent observers. They are entirely at the mercy of the contractor, unless the engineer or architect protects them.

In one instance a courthouse began to crumble within ten years after it was built.[12] In another instance a jail heating plant was defective from the start.[13] In another instance the commissioners discovered they had been unwise in letting a certain large contract and paid $75,000 to get it canceled.[14] There are countless frauds in highway contracts. But not all waste grows out of fraud. Commissioners have sometimes thought it economy not to employ an

[12] County Government Studies, Department of Rural Social-Economics, University of North Carolina.

[13] *Ibid.*

[14] *Ibid.*

engineer, and roads have been unwisely located or poorly constructed. There is hardly a county that does not report at least one major loss through the naïveté of its commissioners. No one condemns them, for they were honest, well-meaning men in most cases. Nevertheless it is a shame for tax money to be so squandered. Is there no way to protect the commissioners and the taxpayers? There is. Indiana has found a way.

State Examination in Indiana:

The State Board of Accounts in Indiana has added to its duty of examining the accounts of public officers that of examining public improvements. When called upon to investigate the work done under contract for public improvements, the board attempts to determine the difference between the work as performed by the contractor and the obligations imposed by the drawings and specifications. This is accomplished by interviews with officials, contractors, and interested citizens, and by a personal investigation of the work by qualified examiners. This includes an examination not only of the work itself, but also of all contract documents, official records, and statutes affecting the particular work involved. If the examination is made before the work is completed, it is recommended to the disbursing officer that he withhold further payments until the deficiencies are corrected. If the project is completed before the examination is made and deficiencies are discovered, a full report is made by the examiners, setting out in detail the differences between the contract and the work as executed, and if possible a value is fixed on the omitted or faulty construction. The contractor and his bondsmen are then made acquainted with the findings and requested to correct the defects or make settlement of the amount charged. When this fails the local authorities in conjunction with the Attorney General's office bring the matter into court.

From April 1923 to September 1925 ninety-six petitions were filed which were followed by investigations. In about 40 per cent of the cases there were major deficiencies. Two illustrations are given.

(1) City Streets: Streets finished when the state examiners were called. Found same deficient in both quantity and quality of material. Recommended rejection. Non-resident contractor sued in Federal Court. Court rendered judgment in favor of property owners for $22,000.

(2) School house: Building reported finished by both contractor and architect before the state examiners were called. Digging to ascertain depth of foundation, the examiners discovered that no footings had been placed under the same. Subsoil sand—condition dangerous. Contractor compelled to underpin and pour the footings and make other corrections which cost him in excess of $20,000.[15]

It is possible that the state of North Carolina could be of more assistance to the counties in the construction of courthouses, jails, county homes, and other public buildings. For instance, the new jails have been built according to state specifications, but apparently at nothing like a uniform cost per cell. It would seem a proper duty for the state to furnish the counties a close estimate of cost on buildings which vary no more in structure than the jails. The State Department of Education employs an architect, who helps design school buildings and tells the local district how much a particular type of building should cost. Why should there not be a similar service rendered in connection with county buildings? Or why should not the taxpayers of North Carolina be protected as are the taxpayers of Indiana?

State Control over Local Expenditures:

Since no sovereignty inheres in the county it is right and proper that the state should exercise some control over local expenditures. In the last analysis this control must repose in the legislature, but it is extremely doubtful if the power should be exercised directly by the full body of the legislature. Its membership is drawn from every county in the state and the representatives from ninety-nine counties know nothing about the conditions in the one county affected by a special act. Consequently they accept the word of the local representative and vote for his bill in return for his support of their measures. So far as local bills

[15] *Indiana Yearbook*, 1925, pp. 801-803.

are concerned, the General Assembly is not one legislative body but a hundred legislative bodies. Each county representative or delegation is legislating for the home county. Salaries may be increased, offices created or abolished, tax levies and bond issues authorized as the fancy or ambition of the representative happens to dictate. The wishes of the county commissioners may be entirely ignored. It looks as if the county needed protection *from* the legislature more than the protection *of* the legislature.

It is proper for the state to exercise some control over the financial affairs of the local units. Its credit is jeopardized when the credit of the counties and cities is too severely strained. There ought to be a state veto at times, but the legislature is the wrong body to exercise it. It would be better to give this power to the state auditor, or to a state tax commission, or to a specially created board of review. The system in use in Indiana since 1921[16] is recognized as a step in advance of that of any other state in the Union.

State Review in Indiana:

The Indiana law confers the reviewing authority over local tax levies, budgets, and bond issues upon the State Board of Tax Commissioners. If objection is made to any budget item or tax levy, ten or more taxpayers may file a petition with the county auditor and demand that the budget and tax rate be reviewed by the state board. A hearing is then held by the State Board of Tax Commissioners in the county where the taxing unit is located, and after such hearing it has authority to approve or reduce the tax levy. No increase can be made by the state board. The hearings are informal. While the taxpayers may employ an attorney if they desire, it is not necessary. All that is required is that they appear at the hearing and in their own way give their reasons for objecting to the levy. The action of the state board is final.

Proposed bond issues, in excess of $5,000, may be appealed in the same way. The law provides that whenever the officials of a municipal corporation contemplate the

[16] *Indiana Tax Law*, 1919, amended 1921, secs. 200, 201.

issuing of any bonds or other evidences of indebtedness in amounts in excess of $5,000, two weeks' notice of such determination must be given the taxpayers. Such notice must show what the money is to be used for, the assessed valuation of the municipal corporation, and its total indebtedness. The notice must also contain the information that ten or more taxpayers, other than those who pay a poll tax only, who feel themselves aggrieved by the proposed indebtedness, may appeal to the state board for further action.

The State Board of Tax Commissioners is composed of three commissioners appointed by the governor, each for a term of four years, not more than two of whom shall belong to the same political party. The board, with the advice and consent of the governor, has power to employ such counsel, engineers, examiners, experts, clerks, accountants, and other assistants as it may deem necessary.

In 1925 the tax levies in 113 taxing units (there are over 3,000 taxing units in the state) were reviewed and reductions were made in sixty-five amounting to $1,544,004. In four and a half years the board has approved bonds to the amount of $26,754,743 and disapproved bonds to the amount of $18,251,461.[17] Of course the possibility of an appeal to the state board operates automatically as a restraint on most local taxing authorities. The law, therefore, has a corrective influence far beyond the specific cases brought before the board. Another far-reaching effect of the Indiana plan is to give all taxpayers a more intimate contact with the machinery of levy making, and enable them to exert a positive influence on tax rates and public expenditures. High taxes *per se* are less exasperating to taxpayers than the sense of helplessness in regard to them.

How superior the Indiana plan is to the North Carolina plan! In this state the taxpayers have sometimes found themselves the victims of exorbitant taxes imposed by the unwitting vote of uninterested legislators, and with no means of appeal. But perhaps a better day has now dawned.

The Board as an Auditing Body:

Prior to the enactment of the county fiscal control act,

[17] *Indiana Yearbook*, 1925, p. 118.

which will be described presently, claims against the county have had to be approved by the county commissioners before a warrant could be drawn or payment made. In most counties, however, the auditing has not extended beyond payments from the General Fund and the Highway Fund. It has not even extended to the highway fund in all counties. In only a few counties have claims against the school fund been audited by the commissioners.

The thoroughness of the audit has also varied greatly in the several counties. In some counties the full board has passed on each claim. In other counties the chairman alone has performed this duty. Where there has been an auditor he has usually passed on each claim before it reaches the board, so that its task has been more or less perfunctory. In counties having no auditor the claims have usually been verified by some subordinate officer before being presented to the board, but the chance for error has been large.

It has not been uncommon for a bill to be paid twice, or an account to be overpaid. For instance, in a certain county a load of lumber was delivered by a farmer, who presented his bill to the road supervisor. The latter approved it and submitted it to the board. Before the farmer received his pay he sold the county another load of lumber, at the same time presenting his bill for both loads, which was approved by the road supervisor. In the course of time both bills were audited by the commissioners and paid. Thus the first load was paid for twice.[18] The same thing can easily happen when the county carries open accounts with merchants and supply houses. The fault lies in the lack of a system of control at the purchasing end rather than in the procedure after the liabilities are incurred.

In most counties a list of "claims allowed" is included in the minutes of the commissioners' meeting and entered in the "minute docket" as a permanent record. Some counties keep a separate "claims register." There are counties, however, which keep no record of claims allowed, simply a record of vouchers paid. In nearly every county the treasurer keeps a record of disbursements in the form of a

[18] County Government Studies, Department of Rural Social-Economics, University of North Carolina.

voucher record—the vouchers being numbered serially. This record does not remove the necessity of keeping a record of claims allowed. The treasurer can disburse public money only upon an order from the board. Thus his record of disbursements should be supported by an identical record of "claims allowed." The writer has found counties which do not keep this essential record. It is true that the orders on the treasurer are kept by him as evidences of credit, but they are not always filed in a manner to make them of immediate use. Two counties studied by the writer did not even keep voucher records. The only records of disbursements were the check stubs.

County Accountant to Audit. Under the provisions of the recently enacted Fiscal Control Act,

> No claim against the county or any subdivision shall be paid except by means of a warrant or order on the county treasurer or county depository, signed by the head of the department for which the expense was incurred, nor unless the bill or claim for which the warrant or order is given shall have been presented to and approved by the county accountant, or in case of his disapproval of such claim or bill, by the board of county commissioners. The board shall not approve any claim or bill which has been disallowed by the county accountant without entering upon the minutes of the board its reason for approving the same in such detail as may show the board's reason for reversing the county accountant's disallowance. No warrant or order, except a warrant or order for payment of maturing bonds, notes, or interest coupons thereto appertaining, shall be valid unless the same shall bear the signature of the county accountant below a statement which he shall cause to be written, printed, or typewritten thereon containing the words: "Provision for the payment of this warrant or order has been made by an appropriation duly made or a bond or note duly authorized, as required by the 'County Fiscal Control Act'."[19]

Verification and approval of all claims, including those against the road and school funds, by the county accountant or the commissioners before they are paid by the treasurer, will provide an effective and much needed safeguard. The further provision that no claim shall be paid unless the

[19] *Public Laws of 1927*, chap. 146, sec. 16.

expense has been anticipated and provided for is an aid to sound fiscal control.

COUNTY ACCOUNTING

The Importance of Accounting:

No business, public or private, can operate with efficiency and economy without an adequate system of accounts. Accounts record in condensed form the business history of a concern. They furnish the executive, or directing head, a bird's-eye view of the operations of the business as a whole for use in the formulation of administrative judgments and policies. A comprehensive set of accounts, carefully analyzed, reveals the sources of gain and loss; it furnishes a chart for future action. Without such accounts each year's procedure must be one of trial and error, or of guesswork. Private business has learned this lesson and no wide-awake concern attempts to get along without thoroughgoing accounts. Public business has too often been negligent in this important phase of administration, a neglect which is costly to the taxpayers.

Deficient Bookkeeping in County Government:

A study of county government in the state has revealed an astonishing deficiency in the matter of bookkeeping and accounting, though there is a prospect now for a great improvement. The last General Assembly enacted legislation which, if carried out, will improve the accounting systems and the financial practices of the counties immeasurably. Before presenting the content of this legislation, however, it will be well to describe the conditions which provoked this rather remarkable legislation and to point out the most conspicuous needs.

Attention has already been called to the deficient tax records and to the inadequate accounts kept by many tax collectors and treasurers. The record of expenditures has been slightly better, on the whole, than the record of receipts. The State Department of Public Instruction designed a ledger for school accounts, which has been adopted in ninety or more of the counties. The disbursements from the General County Fund have been recorded usually with some thor-

oughness but quite often without classification. Rarely has there been a double-entry system of accounts used. The character of accounting practiced by the highway boards has varied from excellent to "no record at all." In general, those counties which have had auditors or competent bookkeepers have kept fairly satisfactory accounts so far as they serve local purposes; but, lacking uniformity, they have been of little value for comparative purposes. Most of the counties which have had no full-time auditor or bookkeeper have been very deficient in accounting practices.

It has not been uncommon for a new administration to come into office and find no intelligible record of bonded indebtedness, or of current indebtedness, or of uncollected taxes, or of tax sales, or of total assets and liabilities. Sometimes there have been half a dozen ex-officeholders owing more or less uncertain balances to the county. Sometimes there have been interest payments overpaid and others past due and unpaid. Sometimes there has been a considerable volume of outstanding claims the authenticity of which is in doubt. The commissioners have found themselves completely in the dark as to the financial condition of the county, and generally they went out of office leaving their successors just as much in the dark.

The lack of systematic bookkeeping has many serious results besides the handicap to the commissioners. It permits and encourages fraudulent entries or unreasonable charges. It leaves an official uncertain as to his obligations to the county; it encourages him to overdraw and then attempt to conceal the shortage. It makes an audit expensive and sometimes meaningless. It prevents an effective analysis of disbursements and a study of unit costs. It consigns county government to a permanent low level of efficiency, for, in the words of Dr. Branson, "no government can rise above the level of its bookkeeping."

The average county official is quite unconscious of his limitations as an accountant. He sees no need for anything more than a cash-book record of receipts and disbursements. Balance sheets, control accounts, cost-accounting, are terms which mean nothing to him. The customary method seems to him quite adequate, and he attempts to follow in

the footsteps of his predecessor. Unfortunately an official quite often fails to live up to his own standard. He starts in by making his entries promptly and conscientiously, but after a time he becomes lax and indolent. There seems to be something about a courthouse atmosphere that develops listlessness and inertia. It is a common thing to find a commissioner's minute docket, for instance, in which the minutes have not been written up for several months, the clerk having taken notes on loose sheets or a scrap docket with the intention of transcribing them later. Check stubs are not filled in; marriage records are incomplete; election returns are not docketed; financial records are scattered; everything is in a state of disorder. While these conditions are often the result of sheer laziness and carelessness, they are sometimes the result of incompetence. Not all men possess the capacity for bookkeeping and office management. A man may be a very successful farmer and yet make a poor register of deeds or treasurer. Quite frequently a county treasurer who is entirely conscientious gets his books hopelessly confused. Public accountants, in auditing the books of a county official, usually have to reconstruct every account from the beginning, thus making an audit expensive. The carelessness of the official in his records and in his business practices not only adds to the expense of an audit, but quite often makes a satisfactory audit impossible. There are cases where two auditing firms have arrived at entirely different conclusions with the same records before them.

The Value of Control Accounts:

As already suggested the accounting practice in many counties has been nothing more than a record of cash handlings. In fact, until this year, that is all that the laws governing county finances have required. But with the increased volume and complexity of county finance this is entirely inadequate. A statement of receipts and disbursements throws little light on the financial condition of a county or the soundness of its operations. Cash receipts are not revenues, and disbursements are not expenses. A statement of revenues is the ascertained income belonging

to the fiscal period, regardless of when or how it is collected. A statement of expenses is a record of expenses of the fiscal period, regardless of when or how they are paid. The cash-book record includes revenues that belong to past, present, or future fiscal periods, instead of being limited to the period under review. In the same way, expenses are recorded when they are paid instead of when they are incurred. Under such a system it is difficult to analyze the year's operations; it is difficult to know the true status of the finances; and it is easy to develop a deficit.

In order to know the condition of each fund at all times and to prevent overdrafts it is necessary to maintain control accounts. A general control ledger makes it possible to know the financial condition of the county as a whole and the condition of every office and department. The likelihood of a defalcation is slight when the indebtedness of an officer is known to him and to the commissioners at all times. The lack of systematic accounting which has prevailed in many counties leaves an officer in the dark as to his obligations, encourages him to be careless and profligate, and makes it easy for him to cover up his shortages. It is a condition which, in the words of Dr. Branson, "overly tempts human nature." An adequate system of control accounts substitutes enlightenment for bewilderment in the conduct of county business and throws security rather than temptation around the individual officer.

The Value of Uniform Accounting:

More uniformity in accounting practices is desirable for at least three reasons. First, it will permit comparisons. Secondly, it will permit consolidations to reveal state totals. In the third place, it will simplify and reduce the cost of auditing. How useful it would be if a hundred counties submitted annual statements that were comparable item by item! What an encouragement it would be to economy of operation! What a stimulus it would give to civic interest!

Some states have attained a remarkable degree of uniformity in county accounting. Iowa, for instance, has developed a system of uniform accounting and state examination. A law passed in 1913 provided that the state

auditor should "formulate, prescribe, approve and install a system of books, blanks, records, vouchers, receipts, and all other forms necessary to secure a complete system of accounting for county officers."[20] Under the terms of the law all county officers and offices receiving or disbursing public funds are examined at least once each year—no notice of the time of examination being given in advance. Ivan L. Pollock, commenting on the matter says:

> The new department did not attempt to establish a uniform system of accounting until the needs and existing conditions could be studied. A careful study was made of the best systems in use in Iowa counties as well as of those established in some of the other states. Finally an economical and workable system was adopted and gradually installed. It has taken several years of constant effort to introduce the system in all of the counties and at the present time some of the forms prescribed by the County Accounting Department (in the State Auditor's office) are not in use in some of the counties. But on the whole there is an essentially uniform system of accounting in the ninety-nine counties of this State. This uniformity and the annual examinations by State examiners who are thoroughly familiar with the system and with conditions in other counties has done a great deal to improve financial administration in the counties of Iowa.[21]

As a feature of the budget system which is to be installed in all the counties of North Carolina a standard classification of accounts is being drawn up. It is not contemplated that there shall be uniformity of accounting in every detail, but that, as far as possible, the same nomenclature shall be used and the same general classification of functions and objects maintained. This will render the annual statements sufficiently alike to be comparable.

The Value of a Budget:

One of the best instruments of financial control is the budget. Stated in its simplest terms, a budget is the formulation of a well balanced plan of expenditures within the limits of the estimated income. It contemplates that each year's revenue shall be applied to meet the year's expend-

[20] *Laws of Iowa, 1913*, chap. 8; see *Iowa Code of 1924*, secs. 111-127.
[21] B. F. Shambough (ed.), *County Government and Administration in Iowa*, p. 529.

itures, and that the books shall be closed at the end of the fiscal year. It contemplates further that the program of expenditures shall be drawn up scientifically and impartially, each department or service being given an appropriation commensurate with its real needs and then expected to live within that appropriation. Before the final adoption of the year's budget it is given full publicity and the people given an opportunity to make suggestions or criticisms. It is important that the accounting system be coördinated in detail with the budget appropriations, so that all operations of the year can be traced in direct comparison with the original financial plan. Finally, there should be full publicity as to the operation of the plan, as to the condition of each account, as to the progress of county undertakings, and as to the service rendered by public employees.

The budget may be made one of the most useful instruments of popular government, first, by giving the people a chance to help draw it up; second, by periodic reports as to the condition of the accounts and the progress of county work; and third, a report at the end of the year showing in parallel columns the budget estimates and the actual expenditures, together with a full explanation of the year's achievements and disappointments. There will be less disposition to complain about high taxes when the people are given a larger voice in determining the objects of expenditure and a fuller assurance that the tax went for the purpose for which it was levied. This is one service of a budget.

Beginning with the current year North Carolina counties are required to operate on a budget. The new Fiscal Control Act not only requires the use of a budget, but it wisely adds the requirement that every county must employ a person familiar with modern methods of accounting to serve as its bookkeeper. A digest of this act follows.

THE COUNTY FISCAL CONTROL ACT

County Accountant to Be Provided:

The new Fiscal Control Act[22] provides, in the first place,

[22] *Public Laws of 1927*, chap. 146.

that the board of commissioners in each county shall appoint in April, 1927, and biennially thereafter, "some person of honesty and ability, who is experienced in modern methods of accounting, as county accountant." In counties in which there is an auditor he shall be given the powers and duties of accountant. Or the board may impose the duties upon any county officer except the tax collector or treasurer.

The duties of the accountant, or the person acting in that capacity, are briefly (*a*) act as accountant for the county and its subdivisions in settling with all county officers; (*b*) keep a record of all receipts, disbursements and contracts; (*c*) require every officer and department receiving or disbursing public money to keep a detailed record of all financial transactions; (*d*) examine monthly, or oftener, all books, accounts, receipts, vouchers, and other records of all county officers and departments including the county road commission (where it exists) and the county board of education; (*e*) require regular reports from officers receiving or collecting fees, fines, and penalties; (*f*) file annually a complete statement of the financial condition of the county; (*g*) advise with other county officers and with state officers as to the best and most convenient method of keeping accounts, so as to bring about as far as possible a simple, accurate, and uniform system; (*h*) perform such other duties having relation to the purposes of this act as may be imposed upon him by the board.

A Budget Required:

The second main feature of the act is the requirement that every county operate on a budget basis. The fiscal year ends June 30, and on or before June 1 each department head is to submit his estimate for the ensuing year, also a statement of the amounts expended and estimated to be expended for each object in his department in the current fiscal year. Upon receipt of such statements and estimates, the county accountant shall prepare a budget estimate for the next ensuing year. The act designates nine specific funds which must at all times be kept distinct, and between which transfers are illegal. The budget estimate is submitted to the board by July 1.

Immediately upon the submission of the budget estimate, and at least twenty days before the adoption of the appropriation resolution, the board is required (*a*) to file the budget estimate in the office of the clerk of the board for public inspection; (*b*) to furnish a copy of the budget estimate to each newspaper published in the county, and (*c*) to publish in at least one newspaper a summary of the budget estimate.

Not later than the fourth Monday in July the board shall adopt and record on its minutes an appropriation resolution, the form of which shall be prescribed by the county accountant. The board is not bound by the budget estimates except that (*a*) it shall not reduce the appropriation recommended for debt service; (*b*) it must respect limitations and requirements imposed by the state constitution or statutes; and (*c*) it must take care of any deficits carried over from the preceding year.

Since the budget estimate is prepared before the close of the fiscal year, a supplementary budget must be submitted after July 1 to adjust the difference between estimated balances and deficits and actual balances and deficits. The appropriation resolution is deemed automatically amended by such supplementary budget. Of course, no particular appropriation is affected by this adjustment.

As soon as convenient after the close of each fiscal year, the county accountant is required to publish a statement showing in detail the financial condition of the county and the estimated rate of taxation for the current year.

Not later than Wednesday after the third Monday in August, the commissioners are required to make sufficient levy upon the taxable property of the county to meet the budget requirements, that is, after allowing for supplementary revenues.

Deficits Prevented:

No contract or agreement requiring the payment of money, or requisition for supplies or materials, is valid unless endorsed by the county accountant as follows: "Provision for the payment of the moneys to fall due under this agreement has been made by appropriation duly made

or by bonds or notes duly authorized, as required by the 'County Fiscal Control Act'." Before making such certification the county accountant must ascertain that funds are available to meet the obligation.

All claims must hereafter be presented to and approved by the county accountant: Provided, the board may approve a claim disallowed by the county accountant by entering on its minutes the reason therefor. Accounts must be kept by the county accountant for each object of appropriation, and every warrant or order upon the county treasury must state specifically against which fund the warrant or order is drawn. Such accounts must show in detail the amount appropriated thereto, the amount drawn thereupon, the unpaid obligations charged against it, and the unencumbered balance to the credit thereof.

This is one of the most far-reaching acts in the interest of sound financial practice in county government that has been enacted in this or any other state. Its purpose, in brief, is to place a competent accountant in every courthouse, to develop a degree of uniformity in county accounting, to guarantee a balanced budget in every county every year, and incidentally to discourage wastefulness and fraud and render to the taxpayers an accounting which they can understand.

AUDITING AND REPORTING

Auditing:

There are three different kinds of auditing in connection with county government. The commissioners audit the claims which are presented for payment. The county auditor or an auditing committee audits the books of the other county officers in behalf of the commissioners. Finally the books of all the officers, including the county auditor, may be audited by outside accountants. This last type of audit is not required by law, except for the school accounts, and is performed only when authorized by the county commissioners. The fact that many counties have not had a county auditor and the fact that audits performed by local committees have not been very satisfactory have resulted in the rather general employment of professional auditors.

Of course, the presence of a county auditor does not remove the need for an occasional outside audit.

The greatest objection to audits by certified public accountants has been the expense. The cost has been great because of the tangled condition of the county records. Quite often the accounts have been so confused that they have had to be reconstructed from the beginning. High priced auditors have had to do a great deal of routine clerical work that ought to have been done before they arrived. They have had to spend a great amount of time searching for scattered records or verifying unsupported data. Nevertheless, some of the audits have cost unreasonable sums, and one auditor frankly admitted that he charged all that the traffic would bear.

Now that every county is to have a county accountant and systematic bookkeeping is to be installed, periodic audits by certified public accountants ought not to be an expensive proposition. The financial exhibit of the county accountant will partially take the place of an audit, if the county accountant is as qualified as the law presumes that he shall be.

Financial Exhibits:

In addition to the publication of the annual statement named in the Fiscal Control Act, the law requires the publication of an itemized statement of revenues and disbursements, and also a statement of individual claims audited and allowed. The statute reads as follows:

> The board shall cause to be posted at the courthouse within five days after each regular December meeting, and for at least four successive weeks, or after each regular meeting if they deem it advisable, for one week, the name of every individual whose account has been audited, the amount claimed and the amount allowed and also at the same time and in the same manner post a full statement of county revenue and charges, showing by items the income from every source and the disbursements on every account for the past year, together with the permanent debt of the county, if any, when contracted, and the interest paid or remaining unpaid thereon. The board shall also publish the said statement in some newspaper in the county.[23]

[23] *Consolidated Statutes*, 1334.

Possibly the change in the fiscal year automatically amended all laws relative to annual financial reports. If not, this law ought to be amended by substituting July for December as the time for publication. In view of the publicity to be given the budget estimates and the annual financial statement mentioned in the budget act, this law might be repealed wholly or in part.

So far as the publication of the individual claims is concerned it has the slight merit of permitting the reader to ascertain whether a particular claim has been paid and the amount thereof, provided it can be identified.

The annual statement is useful or valueless depending on the manner in which it is presented. More often than not it is a bare array of figures without analysis or clarifying explanation and thus meaningless to the taxpayers. Occasionally one sees a financial exhibit which reflects an honest attempt on the part of the auditor to make the information intelligible. As examples, one might mention the attractive and illuminating booklets submitted annually by the auditors of Guilford, Edgecombe, and New Hanover counties respectively.

COUNTY INDEBTEDNESS AND BORROWING POLICIES

Increase in Bonded Indebtedness:

Since 1920 the bonded debt of the counties has increased at a rapid rate. If the figures reported were correct the bonded debt of the one hundred counties in 1920 was only $37,013,593. On June 30, 1926, the total had swelled to $112,743,486, or an increase of 205 per cent. This rapid increase is explained largely by the widespread demand for improved roads and schools, these two items accounting for 84 per cent of the indebtedness. On the whole, the indebtedness has been incurred for permanent improvements and is justified. The exceptions are the seven and three-quarter millions of funding bonds, for which there is nothing to show, and the bonds which reflect unwarranted extravagance. No doubt there has been great waste in road construction in some counties. The total bonded debt of the counties has increased considerably since 1926, for the

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new finance act required all floating debts to be funded before July 1, 1927.

Borrowing Practices and Principles:

The older bonds are largely sinking fund bonds, but most of the more recent issues are serial bonds. The latter type is preferable because sinking funds are so hard to keep intact. It has always been a great temptation to tax-levying authorities to omit a levy for the sinking fund in bad years (which may mean an election year) with the intention of levying a little extra the next year. Some boards have even gone so far as to exhaust the deposits in the sinking fund in a political emergency. There is always the danger, too, that a sinking fund may be lost through investment. Time and again sinking fund bonds have matured with no money in the sinking fund to retire them, necessitating a new loan to pay the old one. In the case of serial bonds a portion of the principal is retired each year, and there is less likelihood of abuse.

A considerable fraction of the county debt is represented by funding bonds issued to cover deficits. It has been a common practice for county boards to fail to levy a sufficient tax to meet necessary current expenses. Sometimes this has been due to the inability, or apparent inability, to keep the expenses of the general fund within its constitutional limits. The constitution limits the levy for the general fund to fifteen cents on the hundred dollars' valuation. Quite as often deficits have occurred as a result of politics. It has been more popular politically to accumulate a deficit and then fund it than to keep increasing the tax rate. Adherence to a budget is the best method of preventing deficits, and it is to be hoped that there will be no more funding of deficits in the counties of North Carolina. The first principle of sound finance, public and private, is to limit current expenditures to current income.

It is just and proper to distribute the cost of capital improvements over a period of years by issuing bonds. It is not fair, however, to pass the burden on to the next generation of taxpayers. The second principle, then, of sound finance, as well as of simple justice, is to retire bonds during

the lifetime of the improvement for which they are issued. A certain county in the state built a courthouse in 1907. The bonds were serials and began to fall due in 1925. By that time the courthouse was in a bad state of repair, as well as too small to serve the needs of the county; so it was torn down to make place for a new one. Thus the people of the county must now pay for two courthouses at the same time.[24] All over the state there are counties and townships paying for macadamized roads that have long since been abandoned.

The spirit of pride which is prompting the counties and cities of the state to build better schools, better public buildings, better roads and streets is highly commendable. Even a certain rivalry among the political units to excel in the magnificence of their public buildings is not altogether bad. It is far better to spend a few unnecessary thousands in building a monumental courthouse than to lose the same amount in careless waste. The only question which arises is whether these improvements are being financed in the best way. Governments, like private individuals, are becoming too prone to "buy now and pay later." In other words, it has become a very general practice in this country to buy on the installment plan, and in public buying this means bond issues.

Suppose a county builds a fine courthouse and to pay for it issues 5 per cent serial bonds to the amount of $250,000. Suppose that the principal is retired at the rate of $12,500 a year beginning ten years after the date of issue. The building costs the taxpayers not $250,000 but $500,000. The interest can not be ignored. Plenty of examples might be cited where interest charges even exceed the principal. A certain county in which the commissioners have been unusually wary of bond issues has floated two issues totaling $175,000 to build roads. Computing the interest at 5 per cent (it may be higher) those roads will cost the taxpayers $390,000. A neighboring county which has been rather extravagant in road building has issued bonds to the extent of $1,310,000. The last bond will be retired in 1953 and the taxpayers will have paid $3,100,000. Some of the roads are

[24] County Government Studies, Department of Rural Social-Economics, University of North Carolina.

already in a bad state of repair and the first installment on the principal is payable in 1927. In another county a careless superintendent of schools permitted a deficit of $100,000 to accumulate. The commissioners funded the debt, issuing serial bonds, some of which retire each year from 1924 to 1951. The commissioners followed the only wise course, that of distributing the burden over a period of years, but it will cost the taxpayers about $175,000 to liquidate that debt with absolutely nothing to show for their sacrifice.[25]

"There is one big reason," says a writer in *The Country Gentleman*, "why taxes are high, stay high, and keep getting higher, in spite of nation-wide efforts to reduce them. It can be stated in four words: Interest on bonded indebtedness. Or, interest plus sinking-fund payments to meet debts. . . . Taxes can never be materially lowered unless we first halt the spending of money secured by levying taxes upon next year and the next generation—which is what debts and bond issues mean."[26]

Bond issues for public improvements must not be condemned in a wholesale way. In a state as backward as North Carolina was twenty years ago, it was necessary, in the interest of progress, to build roads, schools, and other public institutions faster than current revenues could pay for them. The improvements were in the nature of investments; they paid for themselves. For instance, practically no one questions the state highway program. The use of the roads more than saves the amount of the gasoline and license taxes by which the roads are paid for. While the results are a little less tangible, better school buildings are also good investments. Nevertheless, the time may now have arrived when counties ought seriously to consider a pay-as-they-go policy and begin to reduce the heavy interest charges.

THE COUNTY FINANCE ACT

A companion act to the County Fiscal Control Act is the County Finance Act.[27] This measure is designed to prevent the accumulation of an unwarranted indebtedness and to

[25] *Ibid.*
[26] O'Brien, "a Nation of Tax Spenders," *The Country Gentleman* Oct.18, 1924.
[27] *Public Laws of 1927*, chap. 81.

otherwise safeguard county credit. Three types of borrowing are permitted: (*a*) notes in anticipation of taxes; (*b*) notes in anticipation of long-term loans; and (*c*) serial bonds.

Short-Term Loans:

A county may borrow for ordinary expenses in anticipation of taxes up to 80 per cent of the amount of uncollected taxes and other unrealized revenue for the current fiscal year, provided such loan is repaid not later than thirty days after the expiration of such fiscal year. A county may borrow for the purpose of paying the principal or interest of bonds or notes due or to become due within four months, and not otherwise adequately provided for, and such loan shall be payable not later than the end of the next succeeding fiscal year.

A county may borrow money in anticipation of the receipt of the proceeds of the sale of bonds to an amount not exceeding the maximum authorized amount of the bond issue. Such loans shall be paid not later than three years after the time the order authorizing the bonds takes effect. Notes maturing in less than six months may be disposed of by public or private negotiations, after five days of public notice. Notes maturing more than six months from date of issue shall be sold in the same manner as bonds, that is, upon sealed proposals after the sale has been advertised for at least ten days.

Purposes for Which Debt May Be Incurred:

In the enactment of the County Finance Act the General Assembly gave its approval to the issuance of bonds and notes and the levy of taxes to pay principal and interest on the same for the following purposes:

(*a*) Erection and purchase of schoolhouses.

(*b*) Highway construction and reconstruction, including bridges and culverts.

(*c*) Bridge construction.

(*d*) Erection and purchase of courthouse and jails, including a public auditorium within and as a part of courthouse.

(*e*) Erection and purchase of county homes for the indigent and infirm.

(*f*) Erection and purchase of hospitals.

(*g*) Erection and purchase of public auditoriums.

(*h*) Elimination of grade crossings in coöperation with railroad companies.

(*i*) Acquisition and improvement of lands for public parks and playgrounds.

(*j*) Funding or refunding of valid indebtedness incurred before July 1, 1927.

(*k*) A portion of the cost of bridges to be constructed at county boundaries.

(*l*) A portion of the cost of public buildings to be constructed or acquired jointly by the county and a municipality within the county.

Maturity of Bonds:

All bonds shall mature in annual series, and a tax sufficient to pay the principal and interest of the bonds when due shall be annually levied and collected. The first installment on funding bonds shall be payable not more than two years after the date of issue, and of all other bonds not more than three years after the date of issue. No installment shall be more than two and one-half times as great in amount as the smallest prior installment. All bonds must mature within the periods specified below:

(*a*) Funding bonds, fifteen years.

(*b*) Refunding bonds, twenty years.

(*c*) Bridge bonds, including retaining walls and approaches, forty years, unless constructed of wood, and in that case, ten years.

(*d*) Elimination of grade crossings, thirty years.

(*e*) Lands for public parks and playgrounds, including improvements, buildings, and equipment, forty years.

(*f*) Highway construction or reconstruction, including bridges and culverts, if the surface, (1) is constructed of sand and gravel, five years; (2) is of waterbound macadam or penetration process, ten years; (3) is of brick, blocks, sheet asphalt, bitulithic or bituminous concrete, laid on a solid foundation, or is of concrete, twenty years.

(*g*) Highway construction of other types, its approximate lifetime.

(*h*) Public buildings of fireproof construction, forty years; of non-fireproof construction, thirty years.

Public Hearings:

After the introduction, and at least ten days before the final passage of an order for the issuance of bonds for school purposes, a sworn statement shall be prepared by a person designated by the governing body for that purpose, showing the existing school debt and what percentage of the assessed valuation it constitutes. The sworn statement of debt shall remain on file with the clerk and be open to public inspection. Not earlier than ten days after the first publication of the order, the governing body shall hear all citizens and taxpayers who may desire to protest against the issuance of the bonds. After such hearing the governing body may pass the order in the form of its introduction, or in an amended form, provided the amount of bonds to be issued shall not be increased by such amendment, nor the purpose of issue substantially changed. Before issuing bonds for other than school purposes the same procedure must be followed, except that the amount of indebtedness for other than school purposes is determined.

Debt Limitations:

No order for the issuance of school bonds shall be passed unless it appears from the sworn statements that the net school indebtedness does not exceed 5 per cent of the property valuation: *provided, however*, that if the net school debt at the time this act was ratified (March 7, 1927) was in excess of four-fifths of the limitation mentioned above, the net debt may be increased as much as 2 per cent of the assessed valuation: *provided further*, that if any county shall assume all outstanding indebtedness for school purposes of every subdivision the limit of the net debt of such county for school purposes shall be 8 per cent.

For all other than school purposes there is also established a 5 per cent limitation, with the proviso that an existing debt in excess of 4 per cent of the assessed valuation may be increased as much as 2 per cent. These limitations do not apply to funding or refunding bonds, for the issuance of such bonds does not increase the net debt.

Popular Referendum:

Bonds issued for other than necessary purposes must be submitted to a vote of the people by virtue of a clause to that effect in the constitution. Bonds issued for necessary purposes do not have to be sanctioned by popular vote unless in particular instances the legislature so enacts. The legislature has provided that bonds issued for necessary purposes under the provisions of this act need be submitted to the voters only when a petition requesting it, signed by 15 per cent of the voters, is filed within thirty days after the first publication of the order. If a majority of the votes cast in the election are opposed to the bond issue, the order must be repealed. No referendum is necessary in order to issue funding or refunding bonds.

STATE SUPERVISION AND GUIDANCE

Examinations by State Auditor:

In 1921 an act[28] was passed by the General Assembly making it the duty of the State Auditor to examine at least once a year, or oftener if in his judgment conditions required it, all counties and county officers receiving or disbursing public funds. The examinations were to be made without notice, and the accountants employed for the purpose were empowered to enter any county office and examine any books or records contained therein. They might demand access to all documents, might examine witnesses, and so forth. In case the audit revealed that the county was indebted to the state, the cost was to be borne by the county; if the audit showed that the county did not owe the state anything, the expense was to be borne by the state. In case the examination disclosed any condition which tended to show that any officer was subject to indictment or removal from office under the existing law, a copy of the audit was to be filed with the attorney general, who should thereupon take such action as in his judgment the facts and circumstances warranted.

Only a few examinations were made and most of those few at the invitation of the county. It was just at this time

[28] *Public Laws of 1921*, chap. 236.

that the state property tax was abandoned; so the possibility of a county owing the state any large sum was removed. Since the audits involved a heavy expense which usually fell upon the state and benefited only the county, they were discontinued. The act was repealed in 1925.[29]

That same year the General Assembly passed another act[30] designed to safeguard the credit of the state and its political subdivisions. The so-called Municipal Bond Recording Act makes it the duty of the clerk of every board which has authorized the issuance of bonds or notes having a maturity of one year or more to file a record of such authorizations with the State Auditor. The law required that all bonds or notes then outstanding be recorded on or before June 1, 1925, and that all subsequent issues be reported currently. The statement which is filed must contain the amount of notes or bonds authorized, their date, time of maturity, interest rate, places at which interest and principal are payable, purpose of the issue, and the name of the board in which is vested the authority and power to levy the taxes for the payment of such obligation.

It was made the duty of the State Auditor to prepare and furnish to all counties, townships, school districts, taxing districts, and municipal corporations throughout the state, blank forms upon which such statements may be made, and to keep the statements made in pursuance of the law filed and indexed. No bonds subsequently issued are valid until so recorded. It was made the further duty of the State Auditor to notify such governing bodies, at least thirty days before the time for the levy of taxes in each year, of the amount necessary to be provided by taxation to meet interest or principal that year due. It was made his further duty to notify each treasurer or disbursing officer in the respective political subdivisions at least thirty days in advance of the time of payment. Any officer who knowingly and willfully violates the provisions of the law is guilty of a misdemeanor.

Now, to aid the counties in the installation and administration of the new financial system, a state advisory com-

[29] *Public Laws of 1925*, chap. 218. [30] *Ibid.*, chap. 100.

mission is set up, and its executive secretary is to be a traveling county adviser.[31]

The County Government Advisory Commission:

The County Government Advisory Commission consists of five members appointed by the governor. At least three of the members must be county commissioners at the time of their selection and all must be "qualified by knowledge and experience to advise and assist the county officials in the proper administration of the county government." Members of the commission are to serve for such term as the governor may designate in his appointment, not to exceed four years. They serve without pay except their actual expenses. The governor designates the chairman, and he has chosen Dr. E. C. Brooks, President of the North Carolina College of Agriculture and Engineering, for that position.

The duties of the commission are to take under consideration the whole subject of county administration, to advise with the county commissioners as to the best methods of administering the county business, to prepare and recommend to the governing authorities of the various counties simple and efficient methods of accounting, together with blanks, books, and other necessary improvements, to suggest such changes in the organization of the departments of the county government as will best promote the public interests, and to render assistance in carrying the same into operation. They may from time to time recommend such changes in the laws controlling county government as they deem advisable.

The County Adviser:

For the purpose of performing the duties set forth above, the commission was authorized to appoint, and has already appointed, an executive secretary. According to the law,

> It shall be the duty of the executive secretary to act as secretary to the commission, to visit the counties in the State, and to advise and assist the county commissioners and other county officers in providing a competent, economical, and efficient administration, to suggest approved methods for levying and

[31] *Public Laws of 1927*, chap. 91, secs. 14-17.

collecting taxes and other revenues, and for keeping the accounts of the various officers and departments of the county government, to prepare a manual of forms and recommendations for the guidance of the county officers in making reports and keeping accounts of the receipts and expenditures of the public money, and to perform such other duties as may be required of him by the commission. The commission may employ such assistants to the executive secretary as it may consider necessary.[32]

The law contemplates that the advisory commission and the county adviser are only to counsel and assist the county officials. They possess no dictatorial powers. The county adviser will ordinarily go into a county on the invitation of the county officials. He therefore goes not as a censor or a spy but as a counselor. It will be his duty to explain legal points, instruct new officials, and assist and encourage those who are having difficulties of any sort. No doubt, if he discovers laxity in administration or violation of the laws, he will be firm in his demand for improvement, but he has no power to compel. The most he can do is to report the condition to the citizens, to the newspapers, and if necessary to the department of justice. The very presence of such an officer will be an encouragement to those who want to do right and will have a restraining influence on those who are tempted to do evil.

This type of relationship between state and local government is an interesting experiment. It may prove to be the best method of getting administrative efficiency and at the same time of preserving local self-government.

[32] *Ibid.*, sec. 17.

Chapter VII

NORTH CAROLINA'S PUBLIC HIGHWAYS

GENERAL CONDITIONS

Increasing Importance of Highways:

The importance of good transportation facilities in the life of a community or a state can hardly be overestimated. There is no doubt that the long period of stagnation in the South was due, in a considerable measure, to the wretched condition of the roads. For generations the rural people of North Carolina and of the other Southern states were literally "stuck in the mud" for several months in a year. Their material and social development has been rendered difficult because of this fact. The dirt roads of the North and West are more passable in winter than those in the South because they freeze solidly and often have sufficient snow to permit sleighing. The red clay roads of the South, with the constant freezing and thawing, become almost impassable.

Good roads in North Carolina are therefore more than an evidence of progress; they have been a means of progress. They are breaking down the provincialism of the rural population; they are giving the people a wider range of interest, a larger market, a broader outlook; they are knitting all sections of the state into a united commonwealth. Some may prefer to credit these things to the automobile, for it was the automobile that created the demand for good roads.

With the increasing volume of traffic on the roads it is not only necessary that the roads be built for year-round use but built to stand heavy loads moving at a high rate of speed. Highway construction requires nearly as much science and nearly as skillful engineering as is needed in the construction of a railroad. Very little was known about road construction at the beginning of the present road-building

era, and even yet there is much to be learned. Nevertheless, great progress has been made, and the newer roads are holding up much better than those built a decade ago. The strain is so terrific on the main thoroughfares that it may never be possible to build a road that will last more than a few years. That is, the surfaces will have to be renewed; the road beds, with good drainage, may be permanent. Since the same road bed may be used indefinitely, it is important that care be taken in reducing grades and eliminating curves, as far as possible, at the time of the first construction.

Some idea of the increase in the volume of traffic on the roads of North Carolina may be gathered from a study of motor vehicle statistics. In 1916 there were in the state only 33,904 automobiles; in 1927 there were 434,200. Even this twelve-fold increase does not measure the increase in traffic, for the mileage per car has also increased. The automobile is no longer simply a pleasure car. Most automobile owners use their cars in their business nearly every day in the year. Motor trucks have almost completely superseded horses for hauling purposes and have also cut heavily into the railroad's short-haul freight business. Local passenger service has been usurped to a large extent by the motor busses. In North Carolina this motor bus service is especially extensive and well organized. The volume of motor traffic on the roads of the state only illustrates what energies are released in a people when good transportation is afforded. And the appealing thing about the North Carolina road system is that those who use the roads pay for their construction and maintenance. The entire mileage of the State Highway System is being financed by automobile and gasoline taxes. Only the local roads are supported from a property tax.

North Carolina's Road Mileage:

North Carolina has approximately 68,000 miles of roads, of which 6,800 miles comprise the State Highway System. Practically all of the state roads have been put in excellent condition, and nearly half of the total mileage is hard surfaced.

A chart issued by the State Highway Commission as of July 1, 1927, shows the mileage of the state road system to be 6,797.75 miles. Classification according to types is shown as follows:

Brick pavement	44.65
Bridges	11.20
Portland cement concrete	1,496.90
Asphalt	1,058.75
Penetrated macadam	92.90
Surface treated macadam	158.95
Surface treated gravel	41.90
Oil treated	601.25
Gravel or shale, untreated	273.90
Sand-clay and topsoil	1,982.90
Dirt, graded and drained	639.85
Total classified	6,403.15
Unaccounted for in chart	394.60
Total mileage of state system	6,797.75

According to figures issued by the Bureau of Public Roads of the United States Department of Agriculture, relating to the end of the year 1925, North Carolina had, in addition to the state highways, 61,716 miles of local roads. These were classified as follows:

Brick pavement	40
Portland cement concrete	90
Bituminous concrete	67
Sheet asphalt	169
Surface treated macadam and gravel	193
Waterbound macadam, untreated	255
Gravel, untreated	2,751
Sand-clay	11,140
Total miles of road surfaced	14,705
Graded and drained	13,900
Unimproved or partially graded	33,111

Including 5,311.5 miles of surfaced roads in the State Highway System at the end of 1925, the total mileage of

surfaced roads at that time amounted to 20,016.5 miles, or 29.4 per cent of the total road mileage. Only seven states had a greater mileage of surfaced roads and twelve a greater percentage. Two years of activity in road building since these figures were compiled has increased the mileage of improved roads considerably in both this and other states.

What Constitutes a Public Highway:

According to the court a public highway is one established and kept in order by public authority, or one used and controlled by the public for twenty years, so that a dedication is presumed.[1] Where a road has been used by the public for twenty years, and there is no evidence how the usage began, a presumption of law arises that the road has been laid off and established as a public road by due course of law.[2] The county commissioners are vested by statute with the power to lay out or discontinue public roads, but their action may be appealed to the superior court.[3] The court has the power to decide whether public convenience requires the laying out of a road and to order a jury for purposes of laying it out. All roads that have been laid out or appointed by virtue of an act of the Assembly, or any order of court, are to be considered as public roads.[4]

A cartway is a private road established by law for a person who has not the benefit of a public highway. It is not maintained by the public.

Legislative Restrictions on Road Boards:

The constitution gives the county commissioners a general supervision and control over roads and bridges,[5] but the legislature has the right to modify, change, or abrogate these powers of the commissioners,[6] and it has exercised this right on many occasions. It may, and often does, create a special road commission[7] and confer upon it powers formerly enjoyed by the county commissioners. It may prescribe by what method roads shall be worked

[1] *Consolidated Statutes*, 3750; State *v.* Norris, 174 N. C. 808.
[2] State *v.* Marble, 26 N. C. 318.
[3] *Consolidated Statutes*, 3761; King *v.* Blackwell, 96 N. C. 322. [4] *Ibid.*, 3750.
[5] *North Carolina Constitution*, art. 7, sec. 2. [6] *Ibid.*, art. 7, sec. 14.
[7] *Consolidated Statutes*, 3750, 3635, 3662, 3707, 3740, 3778.

and kept in repair, either by labor, by taxation of property, by license taxes, or by a combination of these methods, and the method may vary in different counties and localities. The legislature can provide a special road law for a county, or several counties, or a township, or a particular district, and it can make the adoption of a road system depend upon acceptance or rejection thereof by the people, or by the landholders, or by the official board of such county, township, or locality.[8] The court has held repeatedly that the construction and maintenance of public roads is a necessary expense, and therefore the General Assembly has the authority to authorize the creation of debt for that purpose with or without a vote of the people.[9]

Powers of Road Boards:

In enumerating the powers of the county commissioners the general statute includes the following powers relative to highways and bridges:[10]

1. To exercise authority in laying out, altering, repairing and discontinuing highways; in establishing and settling ferries; in building and keeping up bridges; in laying off or discontinuing cartways; in providing draws in all bridges, where the same may be necessary for the convenient passage of vessels; in appointing overseers of highways; in allowing and contracting for the building of toll-bridges, and in taking bond from the builders thereof; and in licensing the erection of gates across highways.

2. To raise by tax the necessary highway moneys, in such manner as may be prescribed by law. (This duty is obligatory.)

3. To appoint an inspector of highways and bridges.

4. To regulate the speed of automobiles, motorcycles and other like vehicles on the public roads and bridges, and make such ordinances as they may deem necessary governing the same.

5. To construct and repair bridges in the county, and to raise by tax the money necessary therefor, and when a bridge is necessary over a stream which divides one county from another, the board of commissioners of each county shall join in constructing or repairing such bridge; and the charge thereof shall be defrayed

[8] *Ibid.*, 3750; State *v.* Holloman, 139 N. C. 642.
[9] *Consolidated Statutes*, 1325; Guire *v.* Commissioners, 177 N. C. 516.
[10] *Consolidated Statutes*, 1297, secs. 18-24.

by the counties concerned, in proportion to the number of taxable polls in each.

6. To appoint commissioners to open rivers and creeks.

7. To grant, subject to the approval and permission of the War Department, the right to bridge a navigable stream.

Ordinarily, when the legislature creates a special road commission the new agency is specifically vested with all the powers, rights, and authority formerly vested in the board of county commissioners. For instance, the seventh article in the 1919 Road Act reads:

> The powers conferred and the duties imposed on the board of commissioners of any county in this state by this act shall be exercised and performed by the board of road commissioners, or highway commissioners, or other bridge governing board, by whatever name known, in counties where the powers and duties of boards of county commissioners in respect to bridges have been transferred or given by law to such board of road commissioners, or other bridge governing boards.[11]

There is one exception which this statement does not indicate but which must not be overlooked. That is, no road commission has the power to levy taxes. That power remains with the county commissioners or with the legislature. The road act quite frequently indicates how much tax the county commissioners shall levy to carry out the provisions of the act.

Many of the road acts are very long and go into considerable detail in regard to financing, type of roads to be built, manner of securing material, payment of damages, etc. It is not worth while to go into all these matters here, but a few extracts from a typical road law[12] (Buncombe, 1923) may be considered illustrative.

> *Claims for damages:* If any person or persons whose land is affected by any new road or any change or relocation of any old road shall, within thirty days after such order is made, claim damages therefor, he or they shall demand of said board in writing damages for the same; and if said board and said owner or owners,

[11] *Public Laws of 1919*, chap. 232. [12] *Public-Local Laws of 1923*, chap. 328.

or the person affected, cannot agree upon the amount of said damages, then said board, within not more than sixty days after the completion of said road, shall order a jury of three disinterested freeholders who shall not reside in the immediate vicinity of the said new road to be summoned by the sheriff or constable, who shall give landowner or owners, or their legal representatives, forty-eight hours notice of the time and place when and where said jury, after being duly sworn, shall view the premises, and shall, after taking into consideration the benefit of said new road to the public travel and to the owner or owners of the land, and the increase in value of his land by reason of said new road, shall assess the damages, and if said benefits shall be considered equal to or greater than the damages sustained, the jury shall so declare. Benefits may also be assessed by said jury against the property of any owner on said new road. Said jury shall, at the next regular meeting, file their report in writing, showing damages and benefits, if any. The board shall either approve or reject said report; and if damages are assessed, same shall be paid out of the county road fund. If the jury shall assess benefits, the same shall be a lien upon the land affected by said new road. . . . The landowner or said board of commissioners may appeal from the finding of the jury as to damages or benefits to the Superior Court, where the question of damages or benefits shall be heard *de novo*.

Entry on land for material: For the purpose of carrying out the provisions of this act, the county commissioners of the county of Buncombe, their duly appointed engineer or engineers, or other employees, are authorized to enter upon lands near to or adjoining any road in the county of Buncombe upon which may be located any rock or stone quarry, sand, timber or other road material, for the purpose of securing the same for use on the public roads of said county; and said commissioners are hereby authorized to condemn a road or cartway from any public road or cartway to said quarry, gravel, sand or timber or other material, and to cut and carry timber, except trees or rows of trees upon improved land, planted or growing for ornament or shade, and they are authorized to dig or cause to be dug or carried away any gravel, sand, clay or stone thereon, or to use any water found thereon which may be necessary to construct, pave or otherwise surface or improve any of the said public roads, doing as little injury to said land and timber or improvements thereon as the nature of the case and the public good will permit. . . . If the owner shall present an account for the same through the road engineer at any regular meeting of the county commissioners, within

thirty days . . . it shall be the duty of said commissioners to pay for the same at a fair price; and they may cause to be appointed an impartial jury of three freeholders.

Right of condemnation: The commissioners have the exclusive power and authority over all public roads in the county, to pave or otherwise surface the same, and exclusive power and authority to lay out all new roads, to locate, relocate, change, widen or discontinue any old road or any part thereof . . . and for these purposes they are hereby vested with the right and power of condemnation.

HISTORY OF ROAD LEGISLATION IN NORTH CAROLINA

Growth of Good Roads Sentiment:

After the appearance of the automobile there rapidly developed a demand for roads which would be dependable at all times. This demand did not appear as early in North Carolina as in the states with large urban populations. Yet, when it did appear, it grew rapidly in volume and in intensity. A naturally conservative people were, in less than a decade, completely and almost unanimously converted to the good roads cause. No other movement, not even education, has won such hearty and universal support as the good roads proposition. State, county, township, and municipality have been willing to tax themselves and bond themselves to the limit in order to build roads, and have done so.

To enumerate and analyze all of the road laws, general and local, which have been enacted since the beginning of the road-building era would be a tedious and useless task. An attempt will be made, however, to give the substance of the more important acts, especially those which are still on the statute books. After a presentation of the laws under which the local units have acted, together with an estimate of the results achieved, a brief history and description of the State Highway System and of federal aid will be attempted.

Township Road Bonds:

One of the first general acts in the interest of improved highways was that passed in 1913 which permitted the townships to issue bonds for road purposes. The act[13]

[13] *Public Laws of 1913*, chap. 122, or *Consolidated Statutes*, 3696-3704.

provided in substance that for the purpose of laying out, establishing, altering, repairing, grading, constructing, and improving in any way the public roads in various townships of the state, and for purchasing machinery, tools, etc., necessary for such improvements, the board of county commissioners of any county might issue bonds not in excess of fifty thousand dollars for any one township. Such bonds were to be paid by the township for which they were issued, and were not to be chargeable against any property or polls outside the township. The county commissioners simply acted as agents for the township.

Such bond issues had to be preceded by a petition in writing, signed by not less than one-fourth of the qualified voters of the township, requesting the county commissioners to order an election, and a majority of the qualified voters voting in favor of the bond issue at the election. If the petition called for the issue of bonds to an amount less than the maximum allowed, no further petition might be circulated nor election held until at least twelve months had elapsed.

The act provided that the funds derived from the sale of bonds on account of any township should be expended as far as possible for permanent improvements only. Unfortunately, little was known about road building at the time, and many of the roads built or improved under the provisions of this act were not durable. The bonds are, in large numbers, still outstanding, but the roads have deteriorated so badly that they have had to be rebuilt or abandoned.

County Bonds for Federal-Aid Roads:

In 1919 an act[14] was passed which authorized the boards of county commissioners in the counties of the state to issue bonds of the county from time to time for the purpose of paying the county's share of the cost of constructing or improving public roads in the county at the joint expense of the federal government and the county, or the joint expense of the federal government, the state, and the county, under agreement between the Secretary of Agriculture of the

[14] *Public Laws of 1919*, chap. 312, or *Consolidated Statutes*, 3619-3633.

United States and the State Highway Commission of North Carolina. The act also authorized a tax levy to pay principal and interest of such bonds, and a further levy to maintain the public roads constructed or improved with the aid of the federal government. In thirty-one specified counties this article was not to be applicable unless adopted at a special election.

Creation of Road Districts:

A statute passed in 1917 and reaffirmed in 1919 provides that whenever it is desired to create a road district in any county, and provide funds for the location, construction, reconstruction, or maintenance of roads within such district, such road district may be created in the following manner:

Upon petition of twenty-five freeholders living within the area of a proposed road district, which petition shall give the boundaries of the proposed district, together with the amount of bonds it is desired to issue for the district, or the amount of special tax it is desired to levy upon the proposed district, and when said petition is presented to the board of county commissioners it shall be the duty of the board of county commissioners of any county, upon receipt of such petition, to provide for holding an election at the next election of county officers, or at any other time not less than thirty days from the date of such order, which shall be designated therein, to open the polls and take the sense of the qualified voters living within the boundaries of the proposed road district on the question of whether the board of county commissioners of said county in which the proposed road district is located shall issue the bonds called for in the petition, or levy the special tax called for in the petition, provided that there is included in the petition the approximate number of miles of road it is proposed to improve by such bond issue or special tax; but no election shall be held until the board of county commissioners has been notified in writing that the amount of bonds proposed to be issued or special road tax proposed to be levied will be sufficient to construct, alter, or improve approximately the number of miles of road proposed to be improved: Provided that the approximate amount of bonds proposed to be issued as called for in the petition, together with all bonds previously issued and remaining unpaid by said county for which the property of the road district is liable, shall in no case

exceed an amount equal to ten per cent of the total assessed valuation of the area included within the proposed road district. . . . In case the result of the election is in favor of the road bond issue or the special road tax, then the board of county commissioners shall declare the road district created, and proceed to carry out the wishes of the people of the district in regard to the issuing of bonds or the levying of a special tax heretofore provided for townships or road districts.[15]

In addition to this method the legislature may, by special act, create a special road district.[16] It may create a special district even for one road.

Creation of County Road Commissions:

In 1917 an act[17] was passed by the General Assembly which provided that the board of county commissioners of any county upon the petition of one hundred freeholders of the county should call an election to determine the will of the people in regard to any one of three matters: (1) Should the county issue bonds (a specified amount) for the purpose of improving its public roads? (2) Should the county levy a special tax, not to exceed fifty cents on the hundred dollars' valuation, for road purposes? (3) Should there be created a county road commission to have charge of the road work of the county? If a majority of the qualified voters voted in favor of any of these propositions, the board of county commissioners should proceed to carry them out.

The act further provided that the creation of the new county road board should follow the adoption of either of the first two propositions, unless the petition specifically stated that the board of county commissioners or an existing road board should continue in charge of road work. If in the petition no such desire was expressed, a county road commission was created, and upon it was conferred the rights and authority previously enjoyed by the county commissioners or an existing road board.

Such a commission, if created, was to be composed of three (amended in 1919 to read "three or five") members,

[15] *Consolidated Statutes*, 3682; *Public Laws*, 1917, chap. 284; *ibid.*, 1919, chap. 68.

[16] Woodall *v.* Highway Com., 176 N. C. 377.

[17] *Public Laws of 1917*, chap. 284, or *Consolidated Statutes*, 3658-3695.

one of whom should be at all times a member of the minority political party. The act provided that the members of the road commission should be appointed by the board of county commissioners. The first appointments were to be for two, four, and six years respectively, and thereafter all appointments were to be for six years.

In case any county failed to take advantage of this act and did not issue bonds or levy a special tax, then any township might proceed to take advantage of the provisions. The procedure was the same except that twenty-five freeholders of the township could initiate the petition. In case a township voted to issue bonds, the board of county commissioners might act as its agent in selling such bonds. Through petition and election the county might later take over the township bonds, and provide additional sums with which to construct a system of county roads. Under this act no county or township could issue bonds in excess of 10 per cent of the total assessed valuation of its property. Township road commissions, like the county road commissions, were to be appointed by the board of county commissioners. These commissions, too, were to have three members, one being from the minority party, and they were to have overlapping terms. If there were a county road commission, township road work might be delegated to that body.

Special road districts, composed of one or more townships in one or more counties, or parts of one or more townships in one or more counties, were granted the same rights and privileges in regard to the issuing of bonds or the levying of special road taxes as were given to townships.

Powers of a County Road Commission:

A county road commission created under the 1917 act constitutes a body corporate and is granted all the powers and authority granted to corporations of like nature by the laws of North Carolina. Under the name of County Road Commission,

> . . . it may sue and be sued, make contracts, acquire real and personal property by gift or devise, hold, exchange, and sell

the same, and exercise such other rights and privileges as are incident to other municipal corporations of like nature, such as the condemnation of land for the construction, widening or changing of any roads in the county, and such other powers as are necessary to carry out any and all the provisions of this article. . . .

It shall be the duty of the county road commission to take charge of laying out, opening, altering, maintaining, or discontinuing of any and all roads of the county; . . . and it is vested with all powers, rights, and authority now vested in the board of county commissioners and other commissions or boards or other road officials of the county for the general supervision of such roads, and for the construction and repair thereof, by contract or otherwise, as may be deemed best.[18]

It is to be observed that this act of 1917 was no more than an enabling act. It permitted counties, townships, or special districts to voice their aspirations, set up organizations, and make a beginning in highway improvement. To that extent it was a good act. Another good feature about the act was the requirement that no bond issue could be floated nor special levy imposed until the State Highway Commission had made an estimate and indicated that the amount of money to be raised was commensurate with the work to be performed. It may have been a bad act in that it permitted and encouraged the creation of secondary boards to whom there should be transferred powers which had theretofore belonged to the county commissioners. It did not represent the beginning of this movement, for some counties had already set up separate road boards under local acts. It was, however, the first general act in the direction of decentralized road control.

The experience of the counties and towns which voted bonds and began to build roads under the provisions of the act was lamentable. It was not the fault of the act; the result would probably have been the same with the county commissioners in charge. Millions of dollars were wasted by the local units in their first attempts to build roads, because they did not know how. Few of the roads built from 1917 to 1921 have held up, but the bonds issued to pay for them are,

[18] *Consolidated Statutes*, 3661-3662.

to a large extent, still outstanding. Mistakes and losses were inevitable during the pioneer stage of highway construction. The pity of it is that there were so many units experimenting at the same time in the same way.

The passage of the general road act in 1917 did not repeal any private or local laws already enacted for the purpose of constructing, altering, or improving the public roads of any county. Furthermore, it was optional with the counties whether they should take advantage of its provisions. A great many public and local acts have been passed since. Consequently, there are almost as many county road laws in operation in North Carolina as there are counties.

The Road Electorate:

In 1919 the General Assembly provided[19] another plan of highway administration for such counties as desired to adopt it. There was to be created in each county which ratified the article a *road electorate* composed of one member from each township in the county and one member at large. The plan was to apply only in those counties where it was ratified by a majority of the board of county commissioners. After such ratification the General Assembly of 1919 might appoint the members of the road electorate for that county. If the General Assembly failed to make such appointments, the board of commissioners was to do so. The members of the road electorate, however appointed, were to hold office until the first of December following the next general election. Their successors were to be elected as other county officers for a two-year term. Any vacancies were to be filled by the county commissioners.

Within thirty days after their appointment the members of the road electorate were required to meet at the courthouse and organize by electing one member chairman and another secretary. At the same meeting they were required to choose three of their number as a county road commission. The members of the road electorate were to meet quarterly, and it was their duty to keep themselves advised as to the condition of all the roads of the county and to make recommendations to the road commission. A member of the

[19] *Public Laws of 1919*, chap. 232, or *Consolidated Statutes*, 3725-3749.

electorate received three dollars per day while engaged in the performance of his duties, but could not be paid over fifty dollars a year; a member of the road commission received the same per diem as the county commissioners and might be paid as much as a hundred dollars a year (raised to two hundred dollars in 1920).[20] This limitation in compensation did not apply to the chairman and secretary.

An amendment in 1920 delegated to each member of the road electorate the duty of supervising the construction and repairing of small bridges, installing cement, clay, or other permanent piping, and the maintenance of the public roads of his township, subject to the general supervision of the county road commission. Such member had the right, subject to the supervision and control of the road commission, to make contracts for the purpose of maintaining and keeping in good condition the roads in his township, and it was his duty to supervise the same. For his services he was to receive from three to five dollars a day, to be fixed by the road commission.[21]

The road commissioners, in addition to attending the regular meetings of the road electorate, might hold call meetings not exceeding three days in each month, and they might examine the roads at any time they might deem advisable, either in a body or by committee, and the chairman might be required by the commission to do any other work which in its opinion might be to the best interest of the road service in the county. All road funds were to be turned over to the depository of the road commission, and any township owning road machinery or equipment must turn it over to the road commission on demand. If the county or any township was, at the time, working convicts on its public roads under any local, special, or private act, the convicts must, upon demand, be turned over to the county road commission. If, on the other hand, the road commission found that working convicts was not profitable it might discontinue convict labor on the public roads. All road funds, from whatever source, were to be expended by the county road commission, but expenditures must be

[20] *Public Laws of 1920*, Extra Session, chap. 60. [21] *Ibid.*

apportioned among the townships as nearly as possible in proportion to the taxes paid by the several townships. All roads laid out, constructed, or improved under the provisions of this act were, after their construction, to be maintained by the county.

It was optional with a county whether it should adopt this plan, but where the plan was adopted the road commission superseded any existing board in the exercise of road powers. Even though the adoption of the plan was optional with the counties, sixty-five counties were specifically exempted in the act itself.

Road Commissions Created by Public-Local Acts:

Although the 1917 road act and the 1919 road act are still on the statute books and provide two very satisfactory ways of establishing county road commissions, nearly every road commission now in existence was created by a public-local act, that is, an act applying to one county only. Some counties created their first county road commissions according to one of the general statutes and later abolished them and set up specialized forms. In fact, some counties have had a new road law, or an existing one amended, at practically every session of the legislature for the last ten years. Every new representative seems to want to be the author of a road law for his county, and in some cases the same representative has drafted three or four such laws. Since 1917, and including that session but not including the session of 1927, the General Assembly has enacted, amended, or repealed 546 public-local road acts. These acts have affected every single county.

At every session of the legislature there have been several acts passed depriving the county commissioners of road powers and setting up separate road commissions and several other acts passed abolishing highway commissions and restoring road powers to the county commissioners. An analysis of the public-local acts in force just prior to the convening of the 1927 legislature indicated that there were fifty-eight counties in which the county commissioners exercised road powers and forty-two counties which had county road commissions. There were counties among both

groups which had additional highway commissions for special districts.

The county road commissions vary little in powers and functions but the dissimilarities in composition and in manner of selection are worth noting. The analysis which follows was prepared prior to the meeting of the 1927 legislature.

COUNTY HIGHWAY COMMISSIONS

County	Members	Term	Manner of Selection	Remarks
Ashe	3	6 years	General Assembly of 1925	Also township trustees.
Beaufort	5	6 years*	Originally by General Assembly; then by County Commissioners	One from minority party.
Bertie	9	2 years	One elected in each township	
Burke	5	5 years*	Originally by General Assembly; then by County Commissioners	Bi-partisan.
Cabarrus	3	6 years*	General Assembly of 1923	
Caldwell	5	2 years	County Commissioners	Bi-partisan.
Camden	3	6 years*	General Assembly	
Caswell	3	2 years	Originally by General Assembly; then by voters of the county	
Catawba	8	4 years*	County Commissioners	One from each township.
Cherokee	6	6 years*	General Assembly of 1924	One from each township; three from each party.
Chowan	5	6 years*	County Commissioners	Bi-partisan.
Currituck	3	2, 4, and 6 years	General Assembly of 1925	
Edgecombe	5	4 years*	County Commissioners	Jurisdiction does not include 2 special road districts.
Forsyth	3	6 years*	General Assembly	Bi-partisan.
Granville	3	4 years	General Assembly	
Halifax	5	2 years	Voters of the county	
Harnett	5	2 years	County Commissioners	One from each of five districts.
Henderson	3	2 years*	County Commissioners	J. P.'s constitute township trustees.
Hertford	6	2 years	One elected in each township	
McDowell	3	6 years*	Originally by General Assembly; then by popular vote	
Mecklenburg	3	6 years*	General Assembly	

Montgomery	7	4 years*	Originally by General Assembly; then by County Commissioners	
Moore	9	2 years	County Commissioners	One from each township.
Nash	7	2 years	County Commissioners	
Pasquotank	7	2, 4, and 6 years	General Assembly of 1923	Vacancies filled by State Highway Commission.
Person	3	6 years*	Voters of the county	
Pitt	3	6 years*	Advisory Commission consisting of one representative from each township	
Polk	3	2 and 4 years	General Assembly	
Robeson	5	4 years	One elected in each of five districts	
Sampson	5	2 years	Four members (2 Democrats and 2 Republicans), appointed by the County Commissioners	Chairman of county commissioners is chairman of road board.
Stanly	5	2 years	Electorate, chosen by the General Assembly of 1925, and consisting of one representative from each township and one from the county at large	
Stokes	5	4 years*	General Assembly	Bi-partisan.
Surry	6	6 years*	Originally by General Assembly; then by County Commissioners	Three from each party.
Transylvania	3	4 years	Governor	
Tyrrell	5	2 years	General Assembly	Bi-partisan.
Union	3	2 years	Electorate consisting of one representative from each township and one at large	Electorate chooses three of its own members.
Warren	3	2 years	Voters of the county	There are also three road supervisors in each township.
Washington	3	6 years*	Governor, upon recommendation of party chairmen	Bi-partisan.
Wayne	5	2 and 3 years	Road electorate of 26 members which, in turn, is chosen by General Assembly	
Wilkes	3	2 years	County Commissioners	Bi-partisan.
Wilson	5	2 and 4 years	Electorate composed of one or more representatives from each township.	
Yadkin	4	4 years	Governor	Bi-partisan.

*Overlapping terms.

County Commissioners in Charge of Road Work:

Until the good-roads movement began about twelve or fifteen years ago no county had a separate highway commission. The board of county commissioners exercised a general supervision and control over roads, while actual administration was left to a township organization. The free labor system prevailed, and if there was a tax levy at all it was insignificant. When it became necessary or desirable to build roads on an extensive scale and to expend huge sums of money, there was a tendency to create separate road boards. While this practice had something to commend it and proved successful in some instances, it produced a divided authority, which is not ordinarily desirable. At any rate, highway commissions have been created and abolished in the counties with surprising frequency. Politics has probably been the dominant motive in the creation and overthrow of these road boards rather than any test of the two systems. There seems to be a tendency, however, to restore control to the county commissioners, for there are at the present time fifty-eight counties where the county commissioners have charge of road matters. Most of these counties, at one time or another, have had independent road boards. It has been found that it is more important to have a capable highway superintendent than a separate highway board. One full-time administrator is worth more than a dozen part-time committees or boards.

The details of administration vary greatly in the fifty-odd counties in which the commissioners are in control. A few of the plans are as follows:

Alamance: The chairman of the county board is a full-time officer and is the chief road executive. With the consent and approval of the board he employs such engineers, foremen, and supervisors as are necessary. He buys all road supplies. P. L.[22] 1921, chap. 96; amended P. L. 1923, chap. 106.

Anson: The county commissioners divide the roads of the county into several road districts and appoint a road patrolman over each district. They also appoint a county road commissioner and purchasing agent. All able-bodied men between the ages of twenty-one and fifty must work six days upon the roads of their

[22] P. L.—*Public-Local Laws.*

respective districts or pay a road maintenance tax of four dollars. P. L. 1923, chap. 242; amended P. L. 1925, chaps. 392, 472, and 511.

Buncombe: One of the county commissioners is made a full-time highway commissioner. The board also appoints a county superintendent, an engineer, and other road officials. The townships may elect whether to adopt a free labor system or levy a tax for the maintenance of township roads. P. L. 1923, chap. 328.

Dare: The county commissioners appoint annually two or three trustees in each precinct (Mann's Harbor and Wanchese). The trustees divide the roads of their precinct into districts and appoint an overseer over each district. The money raised by taxes is turned over to the road trustees of each precinct to be expended by them. P. L. 1925, chap. 111.

Davidson: The commissioners appoint a highway superintendent and such other subordinates as may be necessary and may delegate to these employees such power as the board may think necessary. P. L. 1925, chap. 299.

Gates: The county commissioners are in charge of certain county roads and they may employ an engineer when necessary. Each township has a road commissioner or a road commission elected by popular vote and these officials are responsible for the upkeep of local roads. P. L. 1915, chap. 252; amended P. L. 1924, chaps. 44 and 46.

Haywood: The board of county commissioners employs a superintendent of construction and a superintendent of maintenance. The county is divided into not more than six maintenance districts with a maintenance unit in each district under the supervision of the maintenance superintendent. He employs his own assistants and foremen. All able-bodied men between the ages of twenty-one and forty-five must work six days or pay six dollars. P. L. 1923, chap. 119.

Hyde: One of the members of the board of county managers acts as county road supervisor. Local roads are under the oversight of township boards of road supervisors composed of the magistrates of the township. P. L. 1923, chap. 555.

Pender: County commissioners choose a road commissioner for each township. He divides the roads into sections and appoints an overseer for each section. All able-bodied men between twenty-one and forty-five must work six days or pay ten dollars. P. L. 1921, chap. 322.

Rutherford: Each of the three county commissioners personally oversees road work in one-third of the county. They sit as a

road board on other days than when they sit as county commissioners.

Yancey: Commissioners appoint one or two overseers for each township. May appoint county superintendent. Free labor system in use.

Highways and Politics:

An examination of the 546 public-local road acts enacted in the last ten years will show very clearly that politics has been the dominant motive in much of this legislation. A new road law is not designed every two years for the sole purpose of improving the organization. Quite often the new organization is simply a vehicle by which to elevate one group to power and depose another. It will be noticed that the members of many of these road boards were named by the legislature. Ordinarily, such a provision is included for one of two reasons: it is to insure that the board members shall belong to the dominant political party of the state, or it is to give the author of the bill an opportunity to select the members of the commission. Neither of these reasons is defensible, though it must be admitted that individual selection may sometimes insure a very competent board. There is not the slightest justification for a partisan road board. In fact, there is every reason why it should be a bipartisan or, preferably, a non-partisan board.

Unfortunately, politics has been manifested not only in the selection of the road commissions but in the locating of roads, the awarding of contracts, the appointment of highway officials, and even in the employment of workmen. This has not been true in any universal way; highway work in some counties and at some periods has been singularly free from political influence. But in far too many cases highway administration has been honeycombed with politics. It is not surprising that this should have been the case. The income from bond issues and additional road levies suddenly swelled the volume of county expenditures to unprecedented proportions, and the temptation to the politicians to dispense a few "plums" was irresistible. Furthermore, all county jobs had long been considered legitimate "spoils of office" and highway jobs, it appears,

proved no exception. The influence of politics is especially noticeable in the location of roads, though not so much so as a few years ago. In fact, the counties are now straightening some of the roads built according to political specifications six or eight years ago. If the county roads could have been constructed with the same degree of efficiency and honesty as the state highways, it is almost certain that millions of dollars could have been saved. Instead, there are counties in the state which are on the verge of bankruptcy because of extravagance and waste in highway construction.

Multiplicity of Road Laws:

With the possible exception of one small group, there are no two counties in the state operating under the same road law. Attention has already been drawn to the forty-two counties having road commissions distinct from the county commissioners. Every one of these counties is operating under a different road law. The same is true of the counties in which the county commissioners exercise road powers. In matters of detail these one hundred road laws differ considerably; in essentials they are all alike. This means that there is no valid reason why all the counties of the state could not be operating under the same road law, or at least under one of two or three optional plans. As already pointed out there are such optional plans now. There is the free labor system as outlined in a previous paragraph. Unless operated merely as a supplement to a tax-supported system this plan is hardly satisfactory under modern conditions. The 1917 road act is very comprehensive and ought to meet the demands of any county which desires a separate road board, yet one which is subordinate to the board of county commissioners. Counties which desire a road board independent of the county board can be accommodated through the 1919 road act. Counties which are satisfied to leave the county commissioners in control need no special act, for their powers are adequate to meet all the problems of administration. The only local legislation necessary then, in any case, is legislative authorization to issue bonds or levy special taxes. There are even general acts to meet this

situation in large part. The great volume of public-local legislation which encumbers every session of the General Assembly is the result, not of necessity, but of personal ambition or obtrusiveness on the part of individual legislators.

A few general acts governing highway administration and financing would certainly invite closer scrutiny on the part of the legislature than a separate act for each county. The multiplicity of local road acts which clutter the statute books and absorb the time of the legislators is not only unwarranted, but is antagonistic to sound financial control and dignified self-government.

LOCAL ROADS

Financing Road Work:

Reference has been made to the many variations in the organization and membership of the county road commissions. The same variations may be found in the boards which serve a single township or a special district. These differences are, after all, quite superficial; in powers and functions all the road boards are very much alike. They are responsible for the construction, maintenance, and repair of the roads and bridges in their respective districts. They are charged with the responsibility of administering the road funds, but they have no power to raise revenue. That is, they cannot levy taxes or issue bonds. They have often expended, however, more than the road levy justified, and the county commissioners have had to liquidate the indebtedness by increasing the levy the following year or by issuing funding bonds. It is true that the commissioners have not always levied a sufficient road tax to meet the contemplated maintenance and construction costs. A large floating indebtedness incurred for road purposes has been common in the counties of the state.

Laws enacted by the last General Assembly demand that every county operate on a budget; so the proper method henceforth will be for the road board, if there is one, to meet with the county commissioners when the budget is being drafted and map out the road work contemplated for the next year. Adequate provision should be made for the

maintenance of roads already built and then provision made for as much construction as is deemed necessary or desirable. The cost of every project should be estimated as closely as possible and then the levy fixed accordingly. The law allows the commissioners, in drafting the budget, to increase the estimate for any fund by 5 per cent. This should be done in the case of the road fund, for road costs are likely to exceed the estimates. Maintenance costs are also more or less dependent on weather conditions. For these reasons the estimates should be liberal. It might even be well to rank the construction projects in the order of importance and, if it became apparent that not all could be completed within the budget appropriation, to abandon the least important projects. In that case these projects should be given prior rights in the budget for the following year.

This method will be a great improvement over the prevailing practice of authorizing constructions for which no money is in sight, in the confident belief that the deficit can be funded.

Methods of Administration:

The details of road supervision vary greatly in the one hundred counties. In some counties the members of the board personally act as supervisors, dividing the county into as many districts as there are members on the board. This is the practice in Polk and Rutherford counties, for instance. In some counties one member of the board acts as a supervisor throughout the entire county. This is true in Hyde County. Some counties, like Warren and Gates, have a road board and a supervisor in each township. In some counties the roads are divided into small sections, each section having an overseer. This is most often the case where the free labor system still prevails. The most popular, and probably the best system is to delegate administrative powers to a county road supervisor who is appointed by and responsible to the commission. This method insures, or ought to insure, the appointment of a practical and well-trained road man. If the county is too large for one man to keep in close touch with all sections, the supervisor should have one or more assistants, or the county should be divided

into several administrative districts. It is justifiable, perhaps, for a large county like Robeson to be divided into several road districts for administrative purposes, though it is doubtful if any county is large enough to warrant different district levies. One purpose of good roads is to bind the different sections of a county into an economic unit, and since all the roads of a county serve all the people of the county, there should be only one tax unit. The only exception would be a county which can never be an economic unit, and if there is such a county its boundaries should be changed.

The County Road Supervisor:

The county road supervisor should be a trained road man and a good executive, who is absolutely free from political obligations. He should be selected solely on the basis of merit, and, having been appointed, should be given considerable latitude in his actions. He should be permitted to select his own assistants without regard to their political affiliations. So far as possible the supervisor should work in harmony with the road commissioners, departing from their counsel only when his greater technical knowledge convinces him that they are wrong. The commission determines matters of policy; he executes their orders in the most efficient manner possible. In other words, the board determines what roads are to be built or surfaced, and he sees that the work is done properly.

If the county has much construction to be done an engineer ought to be employed; if the road work is confined to maintenance or the surfacing of roads already built, a practical road man, though not an engineer, may serve quite satisfactorily. There are probably a number of men in every county who are qualified by experience to serve as road supervisors, but unfortunately appointments are not always confined to this group.

The proper maintenance of roads already built is highly important. Because of inadequate funds counties have often failed to keep up their new roads. This is a mistaken form of economy. It would be better to build fewer miles of new road than to neglect those already built. There has been a great deal of money wasted in maintenance, so called.

In some counties the members of the road commission have made this a source of patronage. They have given each of their nephews and cousins a section of road to maintain and let each keep his own account. The result has been that the roads received attention not when they needed it but when the patrolman found it most convenient. Sometimes the hours of labor charged to the county have been much more than the hours actually worked. This sort of thing will probably exist so long as human nature remains as it is, but the selection of patrolmen on the basis of merit alone and the presence of an aggressive county supervisor, who may appear in any part of the county at any time, will discourage dishonesty.

Another useful service of the county road supervisor is to check the delivery of road supplies and keep a perpetual inventory of road machinery and materials. It should be his duty to verify all payrolls and all other expenditures from the road fund. Of course, his most important work is to act as an executive officer for the road board, or the county board as the case may be, and provide a means of centralized responsibility in road affairs.

The Highway Engineer:

A great many counties have lost money by failing to employ an engineer or the right kind of engineer. It is hardly necessary for all counties to employ an engineer all the time. But if there is an important piece of construction to be done, it is poor economy to establish the location and the grade by guesswork. An initial engineering expense of a few hundred dollars may save thousands of dollars later on. Nevertheless, an incompetent or unscrupulous engineer may be more damaging than none at all. There have been instances of both types. An engineer working in collusion with a road contractor may rob a county of thousands of dollars and never be suspected. Since the average county board cannot be supposed to know how to select the right kind of engineer, it would seem to be the proper function of the State Highway Commission to recommend one or lend one to the county from its own staff.

Construction of Roads and Bridges:

Counties have sometimes built roads and bridges with their own forces and sometimes by contract. There is opportunity for loss in either case. What has worked best in one county may work just as disadvantageously in another county. Edgecombe County is building concrete roads at less cost than the state has been able to build them. It has built several hundred concrete bridges at less cost than the contractors would bid. But Edgecombe is fortunate in having a very practical and energetic engineer, who can get about 50 per cent more work out of a gang of men than the average employer and yet keep their good will. Rutherford County finds that the best method of getting concrete work done is to furnish the material and let the contract by the cubic yard. Other counties find it practicable to let contracts to the lowest bidder and then employ an engineer to see that the contracts are properly fulfilled. If a road is to become a part of the State Highway System later, probably the best way is to furnish the money and let the state forces do the work.

In letting contracts for dirt roads various methods are employed. Sometimes the bidding is for the entire project, sometimes on a per mile basis, and again by the cubic yard or by the day. The last method, which has been used in at least one county, would seem a very risky one. The temptation is too great for a contractor to "soldier" on the job. When construction is done by the county forces it is very important that there be a capable engineer and capable supervisors. It is a good thing to give the employment to local labor, but it is often poor policy to entrust the supervision to local talent.

The Free Labor System:

Until comparatively recent times it was the general practice in North Carolina to maintain the local roads with free labor. All able-bodied men between the ages of eighteen and forty-five were subject to road duty for not more than six days in each year, except west of the Blue Ridge where the limit was ten days. Students and the physically infirm were exempted. Furthermore, any person might employ a

substitute to work for him, or he might pay one dollar (since 1921 two dollars)[23] in lieu of a day's labor.

The township was the unit of administration and the justices of the peace constituted the board of road supervisors. Their road duties were not heavy. The law provided that they should meet at least twice a year (on the first Saturday of February and of August) "for the purpose of consulting on the subject of the condition of the roads in their township."[24] Once in each year, during the week of the August meeting, they were required to go over and examine personally all the roads in the township. At their meeting in August the board of supervisors divided the roads of the township into sections and appointed an overseer for each section. They allotted a certain number of hands to each overseer and designated the section boundaries. Each overseer was required to make a report at each meeting of the board of supervisors, giving the present condition of his road, the number of days worked, the number of hands who attended and worked each day, the number and names of those who failed to attend, whether or not they were legally summoned, and whether or not they had paid the dollar as provided. He was required to make a report of all money collected and how expended. If he had not worked his hands the full amount of time allowed by law, he must show that his section of road was not in need of further work. Any person who failed to respond to road duty, or to pay a dollar a day in lieu thereof, was guilty of a misdemeanor and could be fined or imprisoned, the fine not to exceed five dollars nor the imprisonment to exceed five days for each summons so ignored.

This statute has never been repealed, but there are few, if any, counties which are operating under it. Most counties levy road taxes and employ a special road force, though there are several counties which still use free labor to some extent in caring for local roads. Several of the mountain counties and several of the tidewater counties still cling to the free labor system, though in every case it is supplemented by a road tax. The free labor is usually limited to

[23] *Public Laws of 1921*, chap. 51.
[24] *Consolidated Statutes*, 3752-3760 and 3808-3811.

maintenance work on the local roads, and quite frequently the law permits any township to substitute a tax levy if it prefers.

It is needless to point out that the free labor system, if relied upon exclusively, would not be satisfactory under modern conditions. In fact, it never did provide roads that were passable during more than a fraction of the year. The units were too small to permit the use of the best machinery; the overseers, in most cases, had no knowledge of road building; and the citizen laborers were in haste to complete their allotted number of days.

There is something to be said, however, for free labor as a supplement to a tax levy. In counties where labor is plentiful and money is scarce, there is nothing wrong in permitting a citizen to work out his road tax. The important thing is that he work when the work needs to be done, under competent direction, and in sufficiently large units to permit the use of modern machinery. Free labor is often volunteered in order to get an improvement which would not be possible otherwise. For instance, in Caldwell County the road maintenance tax is usually large enough to permit a few miles of top-soiling each year. Residents along the roads to be improved donate their labor and that of their teams in order to get the largest possible mileage top-soiled. There have been many cases where the people who were to benefit by a new road have contributed a considerable amount of labor. Free labor of this sort is all right. It not only saves taxes but it develops community spirit. It should be encouraged.

Convict Labor:

There are, at the present time, nearly forty counties which are working convicts on the public roads. Several of these counties have more than one camp. During the summer of 1926 there were about 2,000 prisoners at work on county roads. They are usually worked in gangs of twenty-five or thirty men. Any smaller group makes the overhead expense excessive, while too large a group is unwieldy. The counties which support convict camps have been willing ordinarily to take the able-bodied prisoners from the

smaller counties, paying the court costs in order to get them.

The law provides that

> . . . the county road commission shall have direct supervision of the care, feeding, and clothing of said prisoners, and shall provide the sleeping quarters and camps necessary for the proper care of said prisoners. All prisoners' camps shall be maintained in a sanitary manner approved by the state board of health. The county road commission is also authorized, in the care and working of convicts, to divide the prisoners into classes or groups according to the character of the prisoners, and work any and all such prisoners as they deem best without guards and without stripes. Prisoners worked in this manner, without guards and stripes, shall be known as "honor prisoners," and shall be entitled to receive a reduction of at least twenty-five per cent and not more than fifty per cent of the time they are sentenced for satisfactory work and good behavior.[25]

Convicts make good laborers, and wherever they can be utilized in road work, it is, or ought to be, a benefit to the prisoners and a saving to the county. There have been instances, however, when the convict camp has not been profitable, and other instances when there has been abuse of the prisoners.

THE STATE HIGHWAY SYSTEM

Evolution of the State Highway Commission:

In 1901 the first State Highway Commission was created, its members being the commissioner of agriculture and the state geologist, these being authorized to appoint an engineer. By an act[26] ratified March 7, 1911, the first "state highway" was established, from Beaufort to the Tennessee line in Madison County, its route to be selected and designed by the highway division of the state geological and economic survey, the route to follow as nearly as possible that of already existing roads. No state appropriation was made, but counties and towns were to do the work and also appropriate fifty dollars a mile. March 3, 1911, an act[27] with

[25] *Consolidated Statutes*, 3678.
[26] *Public Laws of 1911*, chap. 58, or *Consolidated Statutes*, 3839-3846.
[27] *Public Laws of 1911*, chap. 60; *Consolidated Statutes*, 3846, note.

similar provisions established the Charlotte-Wilmington highway. In June, 1911, the state geologist and others made a survey of the central highway which was to extend from Beaufort to Hot Springs. In 1913 a resolution of the General Assembly urged Congress to appropriate funds to aid the states in building highways, and in July, 1916, the first Federal-Aid Act was passed. In anticipation of the passage of this act, the General Assembly of 1915 provided for the creation of a new highway commission.[28] It was to consist of the governor; three citizens of the state to be appointed by the governor, one from the eastern, one from the central, and one from the western portion of the state, one of whom should be a member of the minority political party; the state geologist, a professor of civil engineering of the University of North Carolina, and a professor of the North Carolina State College of Agriculture and Engineering, said professors to be designated by the governor. The members of the commission were appointed for a term of four years. The commission was to appoint an engineer to serve for six years unless removed from office for due cause by the highway commission. Only $10,000 was appropriated to carry out the provisions of the act; so the commission could act only in an advisory capacity to the various county and township boards throughout the state. The General Assembly of 1917 made no change either in the commission or in the law creating it, except to set aside the funds collected from automobile license fees as a maintenance fund for the state roads.[29]

Real highway construction may be said to have begun with the passage of the 1919 Highway Law in which fees for automobile licenses were increased so as to provide a larger fund with which to supplement federal-aid allotments to North Carolina. By the terms of this law[30] one-fourth of the cost of constructing a road in the state system was furnished by the county in which the road was located, one-fourth from the State Highway Fund and one-half from federal-aid funds. A new commission was appointed with Mr. Frank Page as chairman, and with Mr. W. S. Fallis, state highway

[28] *Public Laws of 1915*, chap. 113.
[29] *Public Laws of 1917*, chap. 141.
[30] *Public Laws of 1919*, chap. 189.

engineer under the former commission, remaining in the same capacity. During the two years that this commission functioned under the law of 1919, approximately two hundred miles of improved highways were completed at a cost of $2,464,000, and six hundred and fifty miles, estimated to cost $9,730,000, were placed under construction. Except for paying a portion of the cost of the work and supervising it, nothing was done by the commission in the way of maintenance, as this phase of the work was left in the hands of county officials.[31]

Realizing the need for a more extensive road-building program and seeing the necessity for a more adequate system of maintenance, certain foresighted citizens of the state began a campaign in 1920, which resulted in the passage by the General Assembly of 1921 of the Doughton-Connor-Bowie Act. The purposes of the law are well expressed in section two, which reads as follows:

> The general purposes of this act are for the State to lay out, take over, establish and construct and assume control of approximately 5,500 miles of hard-surfaced and other dependable highways running to all county seats, and to all principal towns, State parks and principal State institutions, and linking up with State highways of adjoining States and with national highways into national forest reserves by the most practicable routes, with special view to development of agriculture, commercial and natural resources of the State, and for the further purpose of permitting the State to assume control of the State highways, repair, construct and reconstruct and maintain said highways at the expense of the entire State, and to relieve the counties and cities and towns of the State of this burden.[32]

Present Administrative Machinery:

The State Highway Commission, as provided in the Highway Act of 1921 and in amendments of 1923, is composed of the chairman, Honorable Frank Page, who is a full-time official, and one commissioner from each of the nine construction districts into which the state is divided. All are appointed by the governor with the consent of the Senate for terms of six years, three of the district com-

[31] *North Carolina Manual*, 1925, p. 132. [32] *Public Laws of 1921*, chap. 2.

missioners retiring every two years. The law requires that the chairman shall be a practical business man, and that he shall be known as the State Highway Commissioner. He receives a salary of $15,000 a year and expenses. The other members of the commission receive ten dollars per day while engaged in the discharge of the duties of their office, and their actual traveling expenses. As set forth in the Highway Law, the commission has control of the expenditure of the receipts from the bond issues, federal-aid funds, and revenue derived from the gasoline tax and the automobile license fees. It is responsible for the construction and maintenance of the 6,800 miles of roads making up the State Highway System and connecting the county seats and principal towns.

For convenience the state is divided into nine construction districts, each in charge of a district engineer. Each district is in effect a separate unit, but it is at the same time under the direction of the state highway engineer.

Powers and Functions of the State Highway Commission:

The powers and functions of the State Highway Commission are admirably summarized in the *North Carolina Manual* as follows:

To supervise and control the location, construction and maintenance of the State Highway System; to meet the requirements of Federal aid acts; and to administer and enforce other provisions of the State Highway Act.

To keep records of proceedings and adopt rules governing transactions and enforcement of law; to appoint a State highway engineer (4-year term) and other employees, fix their salaries and prescribe their duties; to meet quarterly, or oftener on call of Commissioner or of five members, the Highway Commissioner to devote entire time to the work of the Commission and to be vested with power of Commission when same is not in session.

To designate and map the roads comprising the State Highway System, not to exceed 6,200 (increase authorized by 1927 legislature) miles and to publish same; to alter or relocate same subsequent to public hearing or on its own volition; to let all contracts for construction.

To take over and control existing county or township roads constituting part of system; to provide for necessary road materials; to enforce by mandamus its legal rights.

To regulate use of State highways and to police traffic thereon, to establish a traffic census to secure information concerning use, cost, value, importance and necessity of roads forming a part of the State Highway System as a basis for construction of same.

To assume full and exclusive responsibility for the maintenance of all roads other than streets in towns and cities forming part of system, except roads maintained by counties under contract with Commission.

To exercise full power to comply with Federal aid acts relating to construction, maintenance and improvement of rural post roads.

To regulate street openings and excavations on State-owned roads; to condemn land for rights of way and for purposes of obtaining road materials, such as lime, sand, gravel, timber, etc., and to employ council for advice and legal action; to select and provide road materials; to adopt standard design and uniformly mark all roads comprised in the system.

To keep full account of each road project showing expenditures and liabilities and records of contracts and force account work.

To apportion construction and maintenance funds obtained from receipts of bond issues, automobile license tax, gasoline, road tax and other sources, to each district as prescribed by law.

To make full detailed report to each General Assembly, showing construction and maintenance work and cost of same, receipts of license fees and disbursements.[33]

Construction of State Highways:

Except in a few instances the State Highway Commission has not attempted to build highways with its own machinery. They are built under contract but with state inspectors present to see that the specifications fixed by the State Commission are carried out. All contracts involving over one thousand dollars that the Commission lets for construction, or any other kind of work, must be let, after public advertising, under rules and regulations made and published by the Commission, to a responsible bidder. The right to reject any and all bids is reserved to the Commission. The competition is so keen among the contractors that the state is able to get very low bids. This fact and

[33] *North Carolina Manual*, 1925, p. 127.

the absence of any element of graft has enabled North Carolina to build its highways at a minimum cost.

Before any piece of construction is contracted a traffic census is made to determine the volume of traffic which may be expected to pass over the road. The road census, followed by a survey of available road materials, type of soil, drainage, and other factors, determines what type of construction is most feasible. The research laboratories of the State Highway Department are constantly experimenting with new types of construction. Test roads are built and subjected to severe strain to see which type is the most durable. A great deal has been learned about road building in the last ten years, and the North Carolina highway laboratories are co-operating with those of other states and with those of the federal government in this important study.

Having determined exactly what type of surface is desired for a particular road, the contractor is held strictly to the specifications. Mr. Page, in speaking of this phase of the work, says: "Contractors are not more dishonest than are other groups of people. There are as many contractors who need no watching as there are grocers who don't need it, but there are temptations to which it is not fair to subject them. Cutting down the time of mixing the elements of a paved road thirty seconds would increase the daily output of a mixer thirty-three per cent, and the output of the mixer measures the profits of the contractor. It would also destroy the quality of the road. These are details that need to be watched, and there are two hundred projects under way at a time. This force of inspectors has been trained up by our own engineers, and they are one of the reasons that these roads will be here fifty years from now."[34]

Apportionment of Funds to Construction Districts:

In order to obtain an equitable distribution of the construction funds throughout all portions of the state, the act of 1921 provided that in all the nine construction districts work should begin and continue simultaneously. The State Highway Commission is required to apportion one-third of

[34] "North Carolina's Roadbuilding a Romance of Achievement," *Manufacturers' Record*, May 22, 1924.

the construction fund among the various construction districts on the basis of relative area, one-third on the basis of relative population, and one-third on the basis of relative highway mileage. This would seem to be as fair a basis of apportionment as could be devised.

Distribution of the hard-surfaced mileage has sometimes invited competition among the various counties or sections, but the district commissioners have not let political pressure weigh with them. There has been some paving in nearly every county of the state, but of course preference has been given to the primary roads, on which traffic is heaviest. If traffic is so heavy that it costs more to maintain a dirt road than the interest, sinking-fund payments, and maintenance charges on a paved road, it is time to supplant the dirt road with a hard-surfaced one. Since the Piedmont area has the greatest volume of traffic it is natural and proper that it should have a considerable mileage of pavement. The absence of natural road building material in certain sections has justified concrete roads, even where the traffic is comparatively light. It has also seemed justifiable to build one or more continuous hard-surfaced highways across the state in each direction.

The administration of the State Highway System has been remarkably free from politics, and it may be said with pride that there has never been the slightest hint of graft. It is doubtful if any state in the Union has ever spent $100,000,000 in a more creditable manner. There may have been mistakes at times, costly mistakes, especially during the early years of construction, but there has been no taint of corruption. The payroll has not carried a multitude of political pensioners. The Commission itself has been from the beginning a bi-partisan board, and it has numbered among its membership some of the ablest and most public-spirited men of the state.

Contracts are let, and construction and maintenance supervised from the central office, but the district commissioner designates roads that take preference over others in construction, and where there is an appeal from the findings of the engineering staff, he designates locations. This matter of location is one which excites the most

interest and the most contention on the part of the citizens and the local politicians. The commissioners are besieged with delegations contending for this or that location. Every small town quite naturally wants to be on a state highway. The county-seat towns are guaranteed a state highway connection, and the Supreme Court has ruled that this means that the road shall pass through the county-seat town, and that a spur into the town is not a fulfillment of the law.[35]

Supreme Court decisions to the effect that the State Highway Commission was bound by the original legislative map in the location of roads so hampered the application of sound engineering that the legislature of 1927 liberalized the law considerably. The Commission is denied complete discretion in locating state roads, but the law permits a change from the original location with the consent of the road-governing body of the city or county affected. The new law also provides that all suits as to the location of roads be brought by the road-governing bodies and not by individuals.[36]

Maintenance of State Highways:

A great burden was lifted from the counties when the state assumed responsibility for the maintenance of the roads which make up the State Highway System. At the present time the state is maintaining nearly 6,200 miles of the most traveled roads in the state, and the last General Assembly authorized a 20 per cent increase in the mileage of the State Highway System.

Each of the nine district engineers has charge of maintenance work in his district. Assisting him are from two to three supervisors, experienced, practical road men, who travel within the district reviewing the work and giving instructions to the various patrolmen and foremen. The districts are divided into sections of from eight to twenty-five miles in length, and to each is assigned a road crew whose duties are to maintain the roadway and keep it in satisfactory condition for traffic at all seasons of the year. There

[35] Newton *v.* State Highway Commission, 192 N. C. 54.
[36] *Public Laws of 1927*, chap. 46.

are about three hundred and fifty of these crews, each consisting of a patrolman with one or two helpers. Each crew is supplied with a motor truck of from one to three tons capacity, a road machine, a drag, small tools and other necessary equipment, depending upon the type of road in each section. There are also two or three floating gangs in each district which are equipped with heavy machinery for unusual repair work. These crews operate throughout an entire district. There are also bridge gangs which repair and build timber bridges and sometimes repair, refloor, or repaint steel bridges. The bridge crews are transferred from one district to another wherever there is work to be done. The maintenance department of the State Highway Commission employs about twelve hundred men and costs about $4,000,000 a year.

The North Carolina state highways have received praise for the thorough manner in which they have been marked. Every route is distinctly marked in a manner that is easily discerned by the traveling public. Signs have been erected denoting route, distance, curve, school, crossroads, county line, name of stream, and other information that adds to the safety, convenience, and pleasure of travel. Grade crossings have been eliminated wherever possible.

Financing the State Highways:

The unique and most commendable feature of the North Carolina State Highway program is the manner in which it is being financed. The roads are being built and maintained from revenue derived exclusively from those who use the roads. Automobile license taxes and a gasoline tax yield an income sufficient to meet the administrative expenses of the department, pay interest on the bond issues, build up a sinking fund to retire the bonds, and maintain the entire mileage of the State Highway System.

Bond Issues. The Highway Act of 1921 authorized and directed the issuance of fifty million dollars ($50,000,000) of bonds to carry out the provisions of the act. In 1923 a further bond issue of fifteen million dollars ($15,000,000) was authorized and floated, and in 1925 another issue of twenty million dollars ($20,000,000). The administration of

the State Highway Commission has been so successful and the people of the state are so thoroughly in sympathy with the State Highway System that the General Assembly of 1927 authorized another issue of thirty million dollars ($30,000,000) to continue the program. This last issue was almost necessary, since numerous counties had loaned amounts totaling $18,000,000 to the State Highway Commission in anticipation of further allotments to them. About twelve million dollars of the receipts from the sale of the bonds are being used to repay these advances. It is expected that the remaining six million can be taken care of out of current revenues. The practice of accepting advances from the counties was of doubtful merit and will probably not be indulged in further.

Automobile and Gasoline Taxes. The automobile license tax varies from $12.50 to $40.00 depending upon the horsepower of the car. Motor vehicles used for the transportation of passengers for hire are required to pay 50 per cent more than ordinary rates. The rates for motor trucks vary from $12.50 to $300.00.

The 1921 Highway Act imposed a gasoline tax of 1 cent per gallon. In 1923 the rate was increased to three cents per gallon and in 1925 to four cents. The General Assembly of 1925 imposed upon motor bus lines operating on the state highways a franchise or license tax of 6 per cent of the gross amount received by these carriers from fares and freight charges,[37] but this revenue, amounting to about $140,000 a year, has so far been allotted to the General Fund of the state.

The receipts from gasoline and license taxes have been sufficient to meet all current charges, provide for the retirement of outstanding bonds, and leave several million dollars each year for construction purposes.

Federal Aid:

In July 1916 the Congress of the United States passed an act entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes." This act, as amended in February, 1919,

[37] *Public Laws of 1925*, chaps. 50, 231, 316.

and again in November, 1921, is generally referred to as the Federal Aid Act.[38]

Highways which may receive federal aid are divided into two classes: (1) primary or interstate highways, and (2) secondary or inter-county highways which connect or correlate with the primary roads. The primary roads must not exceed three-sevenths of the total mileage receiving federal aid. Such aid is administered through the Bureau of Public Roads of the United States Department of Agriculture, and the Secretary of Agriculture must approve each project before any aid can be granted.

Each state highway commission is required to file with the Secretary of Agriculture a state map showing the proposed federal-aid highway system and indicating the primary and secondary portions thereof, and only such projects will be approved as are on routes so indicated. The federal-aid system cannot exceed seven per cent of the total highway mileage of the state. Furthermore, the state must make provision for adequate maintenance of the federal-aid roads from state funds.

The amount of federal aid per mile of construction has been limited since 1923 to $15,000 per mile exclusive of the cost of bridges of more than twenty feet of clear span. Except under unusual conditions federal-aid roads must be at least eighteen feet wide.

As an outgrowth of the designation and improvement of the federal-aid highway system and the several state highway systems, and in recognition of the rapidly increasing interstate highway traffic, the joint board on interstate highways has designated a system of main interstate and transcontinental highways and has devised uniform danger and direction signs for the marking of the designated highways in all states. The various routes are indicated by numbers, and the numbering is continuous on each route in all states through which it passes. The roads included in this system are parts of the federal-aid highway system.

From 1917 to 1925 the mileage of federal-aid highways completed in the several states was 46,486 with 12,463 miles

[38] Federal Aid Laws, found in Fifth Biennial Report of the North Carolina State Highway Commission, 1923-1924.

under construction (June 30, 1925). The cost of the entire mileage completed from 1917 to 1925 exceeded $845,000,000 and the federal government had contributed toward this amount approximately $373,000,000 or about 44 per cent of the cost.

The apportionment of federal aid to North Carolina for each year since 1917, together with the total distribution to all the states is shown in the following table.[39]

Federal Aid for Highway Construction

	To North Carolina	*To All States*
Year Ended June 30, 1917....	$ 114,381.92	$ 4,850,000.00
Year Ended June 30, 1918....	228,763.84	9,700,000.00
Year Ended June 30, 1919....	1,482,533.93	63,050,000.00
Year Ended June 30, 1920....	2,165,957.19	92,150,000.00
Year Ended June 30, 1921....	2,279,053.80	97,000,000.00
Year Ended June 30, 1922....	1,709,333.90	73,125,000.00
Year Ended June 30, 1923....	1,139,555.93	48,750,000.00
Year Ended June 30, 1924....	1,477,424.33	63,375,000.00
Year Ended June 30, 1925....	1,697,246.16	73,125,000.00
Year Ended June 30, 1926....	1,699,168.00	73,125,000.00
Year Ended June 30, 1927....	1,708,554.00	73,125,000.00
Total from 1917 to 1927 [*sic*]..	$ 15,717,206.00	$ 671,375,000.00

Highway Patrol:

The roads of the State Highway System are well marked, the grades are relatively uniform, and grade crossings have been eliminated wherever possible. The shoulders of the roads are kept smooth and at the same level as the track. The roads have been made as safe as physical perfection can make them. There is, however, one thing more that is needed for safe traveling, and that is police protection. The amount of reckless driving and of driving while under the influence of alcohol is too great to make travel safe for even the cautious and law-abiding drivers. A patrol of mounted policemen on the state highways would tend to remove this danger. There would also be less danger of brigandage. Finally, these officers could prevent abuse of the roads or the disfigurement of the roadsides in a variety of ways. North Carolina needs a state police force for many

[39] United States Department of Agriculture, *Yearbook, 1925*, pp. 1426-1427.

purposes, and one of the purposes is to protect the hundreds of thousands of travelers who daily ride over her roads. The lack of a state constabulary has caused several counties to provide patrolmen, or rural policemen as they are sometimes called, for their own territory.

Beautifying the Highways:

In constructing surfaced roads more attention has been given to grades and distances than to beauty. Sometimes beautiful trees, landmarks for generations, have been wantonly and unnecessarily destroyed. Highway engineers have been, at times, mercilessly utilitarian. In the last few years, however, there has been a welcome change in this respect. Perhaps it is the influence of the landscape architect. Perhaps it is due to an increased popular interest in nature. At any rate, there seems to be a greater and more general appreciation of beauty, especially natural beauty.

The roads are not being used for commercial purposes alone; people travel for pleasure. They are not satisfied with a smooth surface over which to travel; they want something pleasing to look at along the roadside. Nothing is more monotonous or distracting than a straight, level road flanked on either side with telephone poles. Even a curve or a dip in the road is refreshing. Nothing is more restful to the motorist than trees and flowers along the roadside.

City people, driving for pleasure, will seek the beautiful roads as much as the smooth roads. They will not insist that the route they travel shall be the shortest distance between two points. The combination of an acceptable road surface bordered and shaded by beautiful trees will often entice a traveler along a route that leads to some historic shrine, or some scenic spot, or perhaps to the hostelry that wants his patronage. Roadside planting adds to the charm of the country and elevates the countryman in the eyes of the city dweller. It also furnishes nesting sites, food, and protection for desirable birds. In every way the beauty and comfort of the country roads is enhanced by suitable tree planting on the right of way.

While individual owners may do much by beautifying their premises, the best effects in roadside planting can be

obtained through community effort. Roadside tree planting, even more than tree planting on village and city streets, needs unity of idea and expression over considerable distances. As a rule, longer stretches of country road are visible at one time than of a city street; the rate of travel is faster, and different sections of the road will be passed so rapidly that they will appear as a jumble if the same scheme is not followed for a considerable distance.[40]

Because of the difficulty of getting each property holder to consent to and to act on a given plan, and because the traveling public has as much interest in the appearance of the road as a whole as the adjoining property owner, it is desirable that the planting and subsequent care of roadside trees be in the hands of a public body representing a political division—the state, county, township, or school district. The adoption of a proper planting scheme for any road requires careful study by one familiar with the subject and with the varieties of trees which are suitable for the particular location. It would seem to be an appropriate undertaking for the children and teachers in a consolidated school district to plant the roads leading to the school. A wholesome competition among the schools might be developed. As for the state highways, they should be beautified if for no better reason than to advertise the state.

Along with roadside planting there is another very necessary step to be taken if the roads are to be made pleasing to the eye, and that is the elimination of placards and billboards. They should not only be forbidden by law, but public sentiment should be so opposed to them that the advertiser who disfigured the face of nature would find himself boycotted or publicly censured. It is to the interest of the newspapers to wage relentless warfare against the billboard, for if it were outlawed there would be more money for newspaper advertising.

In conclusion, a word of appreciation should be spoken for the marvelous improvement in bridge architecture. How much more attractive are the graceful concrete arches than the gaunt steel frames of a generation ago!

[40] United States Department of Agriculture, Farmers' Bulletins, No. 1481, *Planting the Roadside*, and No. 1482, *Trees for Roadside Planting*.

Chapter VIII

THE ADMINISTRATION OF JUSTICE

INTRODUCTION

The maintenance of the peace and the administration of justice are to a greater or less extent functions of the county. Until the establishment of state police systems within recent years, it has been the unvarying policy in America to allow each local community to maintain the peace through officers of its own selection, the county sheriff, the town constable, and the city police. Since North Carolina has no state police organization the maintenance of the peace remains exclusively a local function, and largely a county function. It is true that the federal government employs officers to assist in the enforcement of federal laws, but they are not peace officers in any general way. Outside of the cities, the people must look for protection mainly to the sheriff. The constable has never been important in the South.

A subject closely related to that of maintaining the peace is the administration of justice, or in other words the judicial administration of the law. Here again a considerable degree of local autonomy has been permitted, except when serious causes are being adjudicated. At the very base of the state's judicial system is the justice-of-the-peace court, with a jurisdiction extending to petty misdemeanors and civil causes involving small sums. There is not a county court in every county as in some states, appeals from the justice's court being taken directly to the superior court. There are numerous exceptions to this statement, however, for in many counties there has been established an inferior court. This may be a recorder's court or a general county court. The superior court is a state court, but for convenience in administration the state is divided into twenty judicial districts, and terms are held in rotation in the counties of a district. Each county supplies its own staff of court officers, except the judge, who is chosen by the voters of the state at large, and the solicitor, who is chosen by the voters of the

district. The highest court of the state's judicial system is the Supreme Court, which consists of five justices. It meets in Raleigh and has two terms a year, each of which lasts several months.

This chapter will describe the lower courts and their relation to the county, and the administrative officers of the superior court, who are virtually county officers. We shall begin with the oldest and most basic of all—the justices of the peace.

JUSTICES OF THE PEACE

Historical Importance:

For two hundred years the justices of the peace were very important officials in North Carolina. Throughout the colonial period and up until 1868 they constituted the county court with both judicial and administrative powers. Not only did they make up the governing body of the county, but they appointed practically all of the other county officers. Except the clerk of court and, toward the end of the period, the sheriff, they had no political peers. Their position was one of great power and influence.

With the establishment of the county board of commissioners in 1868, the justices were shorn of their governing powers, but not for long. With the return of the old order in 1875, the commissioners were made elective by the justices, and the latter were required to meet with the commissioners whenever any important action was to be taken. This arrangement continued until 1895, after which time the justices became simply township magistrates and road overseers. Within recent years all the counties have had special road legislation, so that in few, if any, counties do the justices now exercise road duties. From their former position of supremacy in the control of county affairs the justices have been reduced to impotence.

So far as the court of the single justice is concerned, it has retained practically the same jurisdiction from the beginning, though it has lost steadily in prestige.

Election and Term of Office:

At every general election there are elected three justices of the peace in each township, and in each township con-

taining a city or incorporated town an additional justice for every one thousand inhabitants in such city or town.[1] This number has been increased in certain counties or cities by special enactments and reduced in some instances by lack of candidates. Election is for a term of two years.

The governor may, from time to time, at his discretion, appoint one or more justices in each county for terms of four years;[2] and the legislature may appoint an unlimited number for terms as long as six years.[3] In 1923 the legislature named 1,145 persons; in 1925 it named 1,229; and in 1927 the number was 1,073. Thus in six years the legislature had chosen 3,447 justices, and most of them for terms of six years.

With 1,023 townships each electing three or more justices of the peace by popular vote, with as many more chosen by the legislature, and with a few hundred others holding office by virtue of appointment by the governor, it is apparent that the total number is surprisingly and unnecessarily large.

John A. Livingstone, a prominent newspaper writer of the state, has been making some investigations in regard to justices of the peace, and he finds that North Carolina is the only state that both elects and appoints magistrates. He says in part:

> Six states provide for appointment of magistrates along with other judicial officers, and thirty-five states provide for the election of magistrates. North Carolina provides for both appointment and election, thereby eclipsing them all.
>
> Not only does North Carolina provide for both appointment and election of magistrates, but it also provides for appointment of magistrates by both the Governor of the State and by the Legislature, thereby establishing itself as the champion magistrate producing state of the American Union.
>
> In the face of a condition without parallel either in America or anywhere in the world, the last Legislature was content with a mere gesture of reform. It gave the Governor of the State the right to remove magistrates "appointed by him" and then turned around and appointed 1,056 magistrates for the State over whom

[1] *Consolidated Statutes*, 1463. [2] *Ibid.*, 1468.
[3] No constitutional basis; an inherent power of the legislature.

the Governor has no more control than any other citizen of the State. . . .

There is neither reason nor excuse for such action by the Legislature, which is a relic of political days that are no more. It is a custom based upon no constitutional sanction and is in fact an assumption of authority that ought to be outlawed.

When magistrates controlled county affairs, appointment of additional ones by the Legislature became a convenient means for a member of the House to dominate county affairs through their appointment, but there is no longer even this excuse.

The last Legislature even had the nerve to appoint a special clerk to draft the omnibus bill, which after being drafted with its 1,056 names, was pushed through in less than one minute's time, thereby establishing another world's record for dispatch of legislative bills. Never before probably was a bill of thirty-five typewritten pages put through a legislative branch in forty-five seconds flat.

The only excuse offered for naming these 1,056 magistrates was that most of them were re-appointed. The representatives of fifteen counties refused to become a party to an action that was plainly a usurpation of authority, and placed no names on the bill.[4]

Every person appointed or elected a justice of the peace is required, before his term of office begins or within thirty days thereafter, to appear before the clerk of the superior court and take the prescribed oath of office.[5] These commissions are filed in a book kept for the purpose.

All original vacancies in the office of justice of the peace occurring before qualification are filled for the term by the governor. All other vacancies are filled by the clerk of the superior court. A justice forfeits his office if he removes from his township and does not return within six months. A justice wishing to resign must deliver his letter of resignation to the clerk of the superior court, who is required to file the same.[6]

A justice of the peace is not barred from holding also a state or federal office.[7]

[4] *Raleigh News and Observer*, March 27, 1927.
[5] *Consolidated Statutes*, 1467.
[6] *Ibid.*, 1467-1470.
[7] *North Carolina Constitution*, art. XIV, sec. 7.

Jurisdiction of the Justice's Court:

Justices of the peace have exclusive original jurisdiction in civil actions founded on contracts when the sum demanded does not exceed two hundred dollars and when the title to real estate is not in controversy. They have concurrent jurisdiction of civil actions not founded on contract, when the value of the property in controversy does not exceed fifty dollars. Their criminal jurisdiction extends to assaults, assaults and batteries, and affrays, where no deadly weapon is used and no serious damage is done, and to all criminal matters arising within their counties where the punishment prescribed by law does not exceed a fine of fifty dollars or imprisonment for thirty days. A justice of the peace may issue a summons or other process anywhere in his county, but he cannot be compelled to try a cause out of the township for which he was elected or appointed.[8]

When an issue of fact is joined before a justice, he is required, on demand of either party, to cause to be summoned a jury of six men to try the case.[9] The party against whom the judgment is rendered in any civil action may appeal to the superior court from the same. In all cases of a criminal nature the party against whom the judgment is given may appeal to the superior court, where the cause shall be heard anew.[10]

Dockets and Judgments:

The board of county commissioners is required to furnish each justice a civil and a criminal docket, and the justice is required to enter a minute of every proceeding in a cause tried before him in the docket. When the books are filled, or the justice's term has expired, the records are filed with the clerk of superior court.[11]

A justice of the peace, on the demand of a party in whose favor he has rendered a judgment, must give a transcript thereof, which may be filed and docketed in the office of the superior court clerk of the county where the judgment was rendered. The time of the receipt of the transcript by the clerk is entered on the docket; and from that time the judg-

[8] *Consolidated Statutes*, 1473-1481.
[9] *Ibid.*, 1501.
[10] *Ibid.*, 660, 1528.
[11] *Ibid.*, 1482-1485.

ment becomes a judgment of the superior court in all respects for the purposes of lien and execution.[12]

A justice of the peace execution can be levied only on personal property and is not a lien except from the levy; while a justice of the peace judgment docketed in the superior court is a lien upon the defendant's land in the county for ten years, by reason of the docketing.

When a case is appealed to the superior court, a lien acquired by the docketing of the justice's judgment merges into the judgment of the superior court, and the clerk issues execution only on the judgment rendered in the superior court. In the same way, all costs are brought forward into the judgment of the superior court.[13]

Failure to Make Reports:

The law[14] makes it the duty of a justice of the peace to make a report to the clerk of superior court on or before Monday of every term of the superior court. It is his duty to furnish a list of the names and offenses of all parties tried and finally disposed of in his court, together with the papers in each case, in all criminal actions, since the last term of the superior court. The clerk is required to hand a copy of such list to the solicitor and to the grand jury. The justices of the peace do not respect this law. In none of the counties studied by the writer have the justices been making these reports. In one county, with thirty justices, the reports became so irregular that the clerk got after the justices, sent them blanks, explained the law to them, and for once got a report from every one. The next time there was just as much indifference as ever, only four reporting.[15] Upon failure to make report their commissions ought to expire automatically.

It is true that most of the justices may have tried no cases and may have nothing to report, but who knows? In one county there were three instances within a few months where justices had tried cases in excess of their jurisdiction, collected costs, turned the defendants loose, and made no

[12] *Ibid.*, 1517. [13] *Ibid.*, 1518. [14] *Consolidated Statutes*, 4631.
[15] County Government Studies, Department of Rural Social-Economics, University of North Carolina.

report. In many instances justices of the peace and constables have been found engaged in the profitable business of arresting and fining violators of the traffic laws, without making any regular or complete reports. In one case a father and son were justice and constable respectively, and were doing a flourishing business when finally detected. Even when the fines are faithfully reported the practice is disreputable, if the officers are more interested in "fee chasing" than in protecting the highways.

Deficiencies of the Magistrate's Court:

While some of the "J. P's.," as the justices of the peace are commonly called, prostitute their offices for private gain, the great majority of them are innocent of corruption. Their only faults are negligence and incompetence.

On one occasion an affray was about to be tried before a justice of the peace; the witnesses had all assembled, many of them coming over bad roads for a distance of twenty miles. About the time the trial was to begin the justice developed some doubt as to his jurisdiction, and he began searching for a lawyer from whom to inquire. It was Saturday afternoon, and it so happened that all the lawyers in town were away. The justice was so uncertain of his powers, and possibly of procedure as well, that he postponed the trial for a week, to the great inconvenience of the witnesses.[16]

Some J. P.'s derive considerable income by performing marriages, especially those whose offices are accessible to the courthouse. One justice who has his office in the courthouse performed over two hundred marriage ceremonies in a year. He established the record of marrying seven couples in forty-five minutes.[17] Some of the abler justices of the peace are also notaries public and render a service to their respective communities in that capacity.

While there are usually a few justices in each county who are capable men performing a useful service, the great majority of them are unfitted for the exercise of judicial authority. On the whole, the position has degenerated from one of eminence and dignity in colonial days to one of obscurity and derision today. This loss in prestige can never

[16] *Ibid.* [17] *Ibid.*

be recovered, and there are those who advocate the abolition of the justice of the peace's court and the adoption in its stead of a circulating county court. Nevertheless, the complete overthrow of an institution that has existed for generations and is woven into the habits of the people is not to be urged without pause. There must always be a court of first instance, and to abandon the existing one for a new and untried substitute might be no improvement.

It is very likely that the justice's office would improve greatly in prestige and in personnel if the number of justices were materially reduced. With only one justice in each township, or perhaps two in the more populous townships, there would be work enough and dignity enough to elevate the office considerably. It is possible that the number might be reduced even more; there might be one justice at the county seat and one in each quarter of the county. The automobile has so reduced distances that there is no need for a court every few miles.

Along with a reduction in the number of justices should come an improved method of selection. Appointment by the governor and by the legislature should be discontinued. They should be chosen by their neighbors and acquaintances, either by election on a non-partisan ballot or by appointment by the judge in response to a well-endorsed petition. The office should seek the man and not be sought by the man. The position ought to be bestowed as an honor on that person in a community whose judicial temperament, wise counsel, and unswerving integrity commend him to his fellow citizens.

A justice of the peace is not expected to be learned in the law; it is presumed that he is not. He is a lay judge before whom minor cases may be heard and adjudicated on the basis of equity and without regard to legal precedent or the formal interpretation of the law. His court ought to be a place where any person who feels that he has been wronged can secure a prompt and informal trial, or where two litigants can secure an impartial adjustment of their differences at a minimum of expense. The justice should not be dependent upon fees for his compensation but should receive a small salary, perhaps one hundred or two hundred dollars a year. There is

perhaps no objection to his receiving fees for notarial work, but every temptation should be removed to recommend a trial over a matter that might be settled by arbitration. Neither should a justice of the peace or any other judicial officer have any pecuniary interest in the outcome of a case.

A recent decision of the United States Supreme Court makes it unconstitutional for a judge to derive his compensation from the costs of a defendant. A part of the digest of the opinion, so far as it concerns the North Carolina system of compensating magistrates, as made by the West Publishing Company, follows:

> Officers acting in a judicial or quasi-judicial capacity are disqualified by their interest in the controversy to be decided.
>
> An accused is unconstitutionally deprived of due process of law if his liberty and property are subjected to the judgment of the court the judge of which has a direct and substantial pecuniary interest in reaching a conclusion against him.[18]

North Carolina is pointed out by Chief Justice Taft as one of a half-dozen states that permit magistrates to collect their fees out of the defendants in their courts. The practice may not be illegal so long as the fees are "trifling," but it is contrary to the soundest principles of justice and to general custom.

There is need for a limited number of justices of the peace, but they ought to be more carefully selected, and they should be elevated, if possible, to the position of dignity which they once enjoyed.

INFERIOR COURTS

Municipal Recorders' Courts:

Cities and towns in the state with a population of five thousand or more may establish what is known as a recorder's court.[19] It is a court of record with a limited jurisdiction presided over by a judge known as the recorder. The time and frequency of meeting is determined by the governing body of the municipality, but ordinarily the court is opened for the trial of criminal cases at least one day of each

[18] Turney *v.* Ohio. Quoted in *Raleigh News and Observer*, April 10, 1927.
[19] *Consolidated Statutes*, 1536-1562.

week. If the docket is not cleared the first day the court continues in session until all cases are disposed of.

The recorder must be a man of good moral character and, at the time of his election or appointment, a qualified elector of the municipality. He may be, and ordinarily is, a licensed attorney. The general statute provides that the recorder be elected at the general municipal election and hold office for the same term as other municipal officers. Some of the recorders' courts, however, have been set up by special acts of the legislature, in which cases the method of election may be different. In Mount Airy, for instance, the recorder is appointed by the governor. The salary of the recorder is ordinarily fixed by the governing body of the town, though in some cases he is compensated on a fee system, the fees being fixed by law.

Prosecutions in the recorder's court are conducted by a prosecuting attorney, who is usually elected and paid in the same manner as the recorder. When specifically requested by the governing body of the municipality and the recorder, he assists in the prosecution of cases bound over or appealed to the superior court. The prosecuting attorney usually, but not necessarily, serves also as city attorney.

The law also requires that the municipality shall elect a vice-recorder to serve when the recorder is prevented by sickness or absence from attending to his duties. Finally, there is a clerk chosen by the governing body of the city to keep the records of the court. These records must contain a full and accurate record of all cases coming before the court and the disposition made thereof, together with a true record of all costs, fines, penalties and forfeitures, and punishments by the court imposed.

Jurisdiction. The court has the following jurisdiction within the following named territory: (*a*) original, exclusive, and concurrent jurisdiction, as the case may be, of all offenses committed within the corporate limits of the municipality which are within the jurisdiction of the justices of the peace or the mayor; (*b*) original and concurrent jurisdiction with justices of the peace of all offenses within their jurisdiction which are committed outside the corporate limits of the municipality and within a radius of two miles thereof;

(*c*) exclusive, original jurisdiction of all other criminal offenses below the grade of felony committed in the municipality or within two miles thereof; (*d*) concurrent jurisdiction with justices of the peace to hear and bind over to the superior court all persons charged with any crime committed within the territory above mentioned, of which the recorder's court does not have final jurisdiction; (*e*) the jurisdiction to try all actions for the recovery of penalties imposed by law, or by any ordinance of the municipality in which the court is located, for any offense committed within the corporate limits of the municipality or within two miles thereof.

In a word, the municipal recorder's court is a criminal court with only slightly greater jurisdiction than the justice's court. It is an improvement over the justice's court in that it meets regularly and also because it is presided over (in practice if not by legal requirement) by a person learned in the law. Its growth is due, in large part, to the breakdown of the justice's court.

When any person is convicted, or pleads guilty, of any offense of which the court has final jurisdiction, the recorder may sentence him to jail or to work on the public roads as provided by law. Of course, a person so convicted may appeal to the superior court. In all cases heard by the recorder against any person for any offense whereof the court has not final jurisdiction and in which probable cause of guilt is found, such person is bound in a bond or recognizance with sufficient surety to appear at the next succeeding term of the superior court of the county for the trial of criminal cases; and in default of bond he is committed to jail to await trial; but in all capital cases such person is committed to jail without the privilege of bail.

Cases brought into the recorder's court are ordinarily tried without a jury, the recorder passing on the guilt of the defendant and also imposing the sentence. A jury must be provided, however, upon demand of the defendant or the prosecuting attorney, in which case the same procedure is adopted as in jury trials before justices of the peace.

Justices of the peace residing within the territory of the recorder's court may bind over persons accused of having

committed certain offenses to the recorder's court rather than to the superior court.

County Recorders' Courts:

In any county in which a municipal recorder's court has not been established in the county seat, the county commissioners may, in their discretion, establish a recorder's court for the entire county, which must be a court of record and must be held at the county seat.[20]

The court is presided over by a recorder who is required to have the same qualifications as are provided for recorders of municipalities. In most cases the recorder is a lawyer, but he does not have to be. Quite often an ex-clerk of the superior court is chosen for this position. The general law dealing with county recorders' courts provides that the first recorder shall be appointed by the county commissioners to serve until the first general election, after which time the recorder shall be elected by the voters of the county. His salary is fixed by the county commissioners. Some of the county recorders' courts have been established through special statutes, in which cases there may be variations in some particulars from the provisions of the general act.

The court must be open for the trial of all criminal causes of which it has jurisdiction at least one day in each week, to be fixed by the board of county commissioners, and continue in session from day to day until all business is transacted by trial, continuance, or otherwise. Special sessions may be called by the recorder when necessity requires. In most counties the recorder's court has its sessions in the courthouse.

The clerk of the superior court is *ex officio* clerk of the county recorder's court,[21] though the board of commissioners may appoint a special deputy clerk to assist the clerk of the superior court or actually take over the work of the lower court. The clerk of the recorder's court is required to keep the same sort of dockets and records as is required in the superior court.

Occasionally a recorder's court attempts to function without a prosecuting attorney, but the arrangement is not

[20] *Consolidated Statutes*, 1563-1582. [21] *Ibid.* 1575.

very satisfactory. It puts too great a burden on the recorder and at the same time makes a vigorous prosecution of criminals difficult. Where there is a prosecuting attorney, or solicitor as he is sometimes called, he is generally chosen at the same time and in the same manner as the recorder. The board may require the county attorney to discharge the duties of prosecuting attorney in the recorder's court and fix his compensation accordingly.

Jurisdiction. The county recorders' courts have the same criminal jurisdiction as the municipal recorders' courts, Both have concurrent jurisdiction with the justices of the peace and, in addition, the power to try all other misdemeanors. Territorially, the jurisdiction of the county recorders' court is the entire county, except that in the territory of existing recorders' courts jurisdiction of criminal cases is concurrent.

Civil jurisdiction was originally conferred upon a county recorder's court by resolution of the board of county commissioners, but this power has been declared unconstitutional.[22] The maximum civil jurisdiction of a recorders' court is as follows: (*a*) jurisdiction concurrent with that of the justices of the peace within the county; (*b*) jurisdiction concurrent with the superior court in all actions founded on contract, wherein the amount involved exclusive of interest and costs does not exceed one thousand dollars; (*c*) jurisdiction concurrent with the superior court in actions not founded upon contract wherein the amount involved exclusive of interest and costs does not exceed the sum of five hundred dollars.

Not all recorders' courts possessing civil jurisdiction have been granted the maximum jurisdiction.

Procedure. All trials of criminal causes in the county recorder's court must be upon warrant issued by the clerk of the superior court or his deputy, or by the recorder, or by any justice of the peace of the county. The warrant must be issued upon affidavit duly made and subscribed, setting forth the complaint against the defendant.[23] Process may be served by the sheriff, a deputy sheriff, or a constable. All officers issuing or serving warrants or other process return-

[22] *Ibid.*, 1589; over-ruled, Provision Co. *v.* Davis, 190 N. C. 7.
[23] *Consolidated Statutes*, 1571.

able to the recorder's court are entitled to the fees prescribed by law. The fees are included in the bill of costs, collected by the clerk, turned over to the county treasurer, and paid to the officers on the order of the county commissioners. At least this is the method prescribed by law. All fines imposed by the court are collected by the clerk and are turned over to the county treasurer for the school fund.

As in the municipal recorders' courts there is no jury for the trial of criminal causes except upon demand by the defendant or the prosecuting attorney. In civil actions, too, the parties shall be deemed to have waived a trial by jury unless demand for such trial is made before the trial begins.[24] When there is a jury trial the procedure is similar to that in the superior court. In either case there are twelve jurors.

Appeals may be taken from the recorder's court to the superior court in term time, for errors assigned in matters of law, in civil actions; in criminal actions the case is tried *de novo*.[25]

Estimate of County Recorders' Courts:

The limited jurisdiction of the justices of the peace and the infrequency of the terms of the superior court make the need for an intermediate court quite pressing in many counties. Where recorders' courts with county-wide jurisdiction have been established the congestion in the superior court has been greatly relieved and the administration of justice expedited. The recorder's court also reduces a county's jail population, for all except felons get a prompt trial. In some counties as much as six months elapses between the terms of the superior court, and a person arrested soon after a term of court and failing to secure bail would have to remain in jail nearly six months awaiting trial. In one county a man who stole some meat got five and a half months of free lodging in jail before his case came to trial.[26] The recorder's court has proved to be, in many counties, a useful and money-saving institution. On the other hand, there are instances of recorders' courts having

[24] *Ibid.*, 1592. [25] *Ibid.*, 1546, 1596.

[26] County Government Studies, Department of Rural Social Economics, University of North Carolina.

proved so expensive or so unsatisfactory that they were abandoned.[27] Some failures have been due to unwise selections for the judgeships. The recorders must be men of judicial temperament, honest, fearless, wise, and impartial. The quality of the court depends so completely on the recorder that it is imperative that the position be given to a person of judicial caliber. Sometimes the compensation has been too small to attract a man of ability, though an ambitious young lawyer will sometimes accept the position for a period because of the valuable experience which it gives. For the same reason a capable young lawyer will sometimes accept the solicitorship of the recorder's court at a financial sacrifice.

Among the twelve counties studied by the author he found only two county recorders' courts. The report on Edgecombe County has this to say about its court:

> The county recorder's court meets each Monday morning in the courthouse. This court has jurisdiction only over misdemeanors and in civil cases up to $500 on contract and $200 on torts. The recorder is appointed by the commissioners and receives $1,000 a year. The solicitor gets $300 a year. He also gets $100 as a retainer in the capacity of county attorney. The commissioners pay him extra if he submits a written opinion.
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> The recorder's court serves a useful purpose, for it relieves the docket of the superior court and also reduces the number of prisoners to be maintained in the county jail. The recorder's court is self-supporting. That is, the solicitor's fees which it yields to the school fund amount to as much as the expense of the court, to say nothing of fines derived for the school fund through this court.[28]

The county recorder's court in Rutherford County is described in the following language:

> Since 1913 the county has had a recorder's court. Mr. ———— has been recorder since 1921. He is not a lawyer, but had several years' experience as deputy clerk of the superior court. Originally filled by appointment by the commissioners the office became elective at the first regular election. Judge ———— has been

[27] *Ibid.*

[28] Paul W. Wager, *County Government and County Affairs in Edgecombe County*, p. 28.

elected each time by good pluralities. At first there was no solicitor for this court, but last year the office of county solicitor was created. It, too, is an elective office. The recorder receives $1,500 a year, and the solicitor is paid on a fee basis. He gets $3.50 for each conviction. The office is yielding him an income of $150 to $175 a month. Recently the jurisdiction of the court was increased, and now it can try all misdemeanors, including all liquor cases, civil cases based on torts up to $500 and cases based on contracts up to $1,000.

The law provides for a daily session and the judge comes to his office every morning, but as a convenience to the solicitor civil cases are tried on Monday and criminal cases on Tuesday and Friday.

This court is a great saving to the county. Last year (1923-24) the court collected for the general county fund $1,324.20 in costs (this is after the solicitor's fees were deducted), and $3,365.81 in fines for the school fund. This year with increased jurisdiction the fees and fines will probably be doubled. A recorder's court also saves the county the expense of feeding prisoners for long periods before trial, and it eliminates many expensive jury trials. Judge ———— declares that a recorder's court or county court is needed in every county. It is expensive and unnecessary to congest the superior court with hundreds of cases that could just as well be tried in an inferior court.[29]

For the first few years after its establishment an inferior court is likely to have many of its decisions appealed, but if the judges of the superior court will uphold the recorders and increase rather than diminish the sentences which they have imposed, criminals will soon stop appealing. Lawyers will cease advising an appeal.

Municipal-County Courts:

The municipal-county court[30] is not unlike the county recorder's court except in the manner in which it is established.

If a county-seat town contains a population of two thousand or over, its governing body, in joint session with the board of commissioners of the county, may by joint resolution call an election submitting to the voters of the

[29] Paul W. Wager, *County Government and County Affairs in Rutherford County*, p. 50.

[30] *Consolidated Statutes*, 1583-1585.

entire county the question of the establishment of a county-municipal court. If the vote is favorable there shall be established a recorder's court to serve the entire county, outside of other municipalities possessing a population of two thousand or over. The two boards jointly are empowered to choose the first recorder, but thereafter the position is filled by popular election as in the case of county recorders generally. A court of this type possesses all the powers and functions of other recorders' courts.

General County Courts:

In 1923 an act was passed by the legislature[31] providing for the establishment in any county of a court of civil and criminal jurisdiction to serve the entire county and to be known as the "general county court." The method of establishment is simple. When, in the judgment of a board of county commissioners, there is need for such a court in their county, they may pass a resolution reciting such fact and calling an election for determining the will of the people. If, at such election, a majority of the votes cast are in favor of the court it shall be established. In most particulars the court is not unlike the county recorder's court.

Officials. The law provides that the county court shall be presided over by the judge, who may be a licensed attorney at law, and at the time of his election shall be a qualified elector in the county. The first judge is to be chosen by the board of county commissioners, but succeeding judges are elected by the voters of the county for a term of four years. The law permits the commissioners to fix the salary of the judge, but provides that it shall not be less than $3,600 a year. The judge is not permitted to practice law in any of the courts of the state.

Provision is made for a prosecuting attorney for the court, to be known officially as prosecutor, who is to appear for the state and prosecute in all criminal cases being tried in the court. His salary is to be fixed by the commissioners at not less than $1,000 annually. As in the case of the judge the first prosecutor is to be appointed by the commissioners

[31] *Public Laws of 1923*, chap. 216; amended 1924, Extra Session, chap. 85, and 1925, chaps. 135, 167, and 250.

and thereafter the office filled by election. If requested to do so by the judge, the prosecutor is required to represent the county in the prosecution of criminal appeals from this court in the superior court.

The clerk of the superior court of the county is made *ex officio* clerk of the general county court, receiving therefor such additional compensation as the county commissioners determine. He is made liable upon his official bond for the discharge of his duties and the care of funds paid to him, to the same extent as he is bound as clerk of the superior court.

The sheriff of the county or his deputies are required to attend upon the terms of the county court in the same manner and with the same power and authority as in the superior court. The commissioners may grant the sheriff additional compensation.

Jurisdiction. The general county court is given the same criminal jurisdiction as the county recorder's court. It can try all criminal cases arising in the county which can be tried by a justice of the peace, and in addition all other criminal offenses committed in the county below the grade of a felony. It can bind over to the superior court persons charged with felonies. It can punish for contempt to the same extent and in the same manner as the superior court.

In civil actions it has jurisdiction concurrent with that of the justices of the peace of the county, and jurisdiction concurrent with the superior court (*a*) in all actions founded on contract, (*b*) in all actions not founded on contract, (*c*) in all actions to try title to lands and to prevent trespass thereon and to restrain waste thereof, and (*d*) in all actions pending in said court to issue and grant temporary and permanent restraining orders and injunctions.

Any person convicted of any offense of which the general county court has final jurisdiction may appeal to the superior court, and any person tried before the general county court for any offense of which it does not have final jurisdiction shall, if probable cause be found, be bound over to the superior court. Civil actions may be appealed for errors assigned in matters of law, and criminal actions may be appealed as from a justice-of-the-peace court.[32]

[32] *Consolidated Statutes*, vol. III, sec. 1608 cc.

Procedure. The general county court must be open for the transaction of business and trial of causes the first Monday of each month and continue until all matters before the court are disposed of.

In civil actions the rule of procedure, issuing process, and filing pleadings must conform as nearly as possible to the practice in the superior court. Process is returnable directly to the court, and no civil process, except subpoenas, can be issued outside the county in which the court is located. Jury trial shall be deemed to have been waived unless demand is made therefor before the trial begins.

In criminal trials the procedure is similar to that in the superior court, except that there is no jury unless upon demand of the defendant or the prosecutor.

Possibilities of the County Court:

The general county court is so new and is in operation in so few counties that it is impossible to form any estimate of its usefulness. On the other hand, it is so nearly like the county recorder's court that it is questionable whether there is a need for both.

The general county court differs from the county recorder's court in three particulars which may not be significant: (*a*) Its jurisdiction extends over the entire county without reservations; (*b*) It has a judge presumably learned in the law, well paid, and devoting his entire time to the work; and (*c*) It has a more extensive civil jurisdiction. Probably these are points of strength, though the recorder's court might acquire all of these virtues. The distinctions are not worth drawing. A further word may be said, however, of county courts in general.

We have pointed out the weaknesses of the justice-of-the peace courts. They served very well under primitive conditions, but they have steadily lost in usefulness and in popular esteem. The county seat, once a day's drive from the outlying farms of the county, is now a few minutes or at most an hour's distance from the most remote farm. The farmers come to the county seat to trade, to do their banking, to attend meetings and entertainments, and they will gradually resort to the use of a county court, if it becomes

an avenue of swift and cheap justice. There is no reason why the county judge might not become, in addition to being the presiding officer of the county court, a mediator before whom contending individuals could submit their differences. There is reason to believe that the next few years will witness a larger use of arbitration and conciliation in the settlement of disputes. Every county ought at least to have the machinery through which arbitration can be effected. Even where there is a formal trial, the machinery should be so simple and the verdict so prompt that the cost of the trial is insignificant. There can be no justice if the cost thereof is prohibitive. The county court ought to become and could become a tribunal into which all the people of the county could bring their disputes and have them simply, cheaply, and expeditiously adjudicated.

If the justices of the peace are to remain, and probably they should in reduced numbers, they ought to be no more than assistants to the county judge. They should look to him for direction and counsel, and he should assist them with their cases or at any time transfer a cause begun by a magistrate to his own court.

Mr. Herbert Harley, Secretary of the American Judicature Society, is an advocate of judicial reform along these lines. He says in part:

> No plan for the improvement of the administration of justice within the county can overlook the insistent need for providing an expert and responsible magistracy. . . . Since local courts exercising part of the judicial power of the State are necessary, it is plausible that the unit of territory should be the county which is the natural unit of State administration. . . . For the administration of justice within the county we must make some one person responsible and must intrust to him adequate authority. This implies a county judge in whom is vested the jurisdiction of the county court together with power to direct the action of all officials serving under him in this court.
>
> It is desired to fix the limit of county court jurisdiction at such a point that one judge will be kept reasonably busy in the county of average population. Accepting the foregoing broad view as to subject matter it appears practical to make this limit $500 alike in contract, tort and chancery matters.

As to criminal matters the county court should conduct all preliminary examinations, should possess exclusive jurisdiction in misdemeanor causes and should have concurrent jurisdiction in all but a few of the most serious felonies. This would mean that in the more common kinds of felony the accused would have the option of being tried by the county judge or by the itinerant judge of the court of general jurisdiction. . . .

The county court will be presumed to be in session every day at the county seat where there will be a resident county court clerk. It should also be competent for the county judge to convene his court anywhere in the county and regular sittings should be scheduled in towns of sufficient importance.

This takes care of the first class of cases, those involving enough money to justify trial at a central point. It is in respect to the economical and efficient trial of the lesser or more remote causes, arising in the villages and on the farms, that speculation begins. They are the causes that historically fall to justices of the peace. There are two possible ways for taking care of them. One is to have the county judge visit every part of the county as often as is needed, and not less often than once in sixty days, to hear all of these little causes in person. This is done in Canada, where every township has a resident clerk and bailiff and is visited at least once in every sixty days by the county judge, who hears while on circuit civil suits involving not more than $100. This appears to be the simplest possible system, but it does not provide for criminal cases, for which an ever present official is needed. Since there must be a local magistrate of some sort to enforce the law criminally, and since we are accustomed to decentralized judicial power in its most extreme form, it would seem better for us to solve the problem by continuing to have local judicial officers of small jurisdiction, both civil and criminal.

How, then, is this magistracy to be different from and better than the present justice of the peace system? We know the faults of the latter, and it should not be difficult to avoid them.

1. We need to make the office more important, more dignified. This is best done by making the district larger. We no longer need a magistrate for every township, perhaps six or seven in a county on the average. The county should be districted arbitrarily to meet such conditions as the distribution of population, the location of centers and facilities for travel. In each district there would be a magistrate who would be a part of the county court.

2. We need some form of expert selection. It would be possible for the county judge to select the magistrates on the theory that

they are virtually his deputies, but this would subject the judge to a vast deal of importuning which he should be relieved of if possible. A better way would probably be to have the magistrates selected by the county board or commission with the approval of the county judge. Under such a plan the county judge would virtually select and at the same time escape most of the solicitation of the office-hungry.

3. We need to abolish the fee system. The magistrate should have a motive for preventing contested trials, rather than for starting and prolonging them. We must not penalize the magistrate who wants to act as peacemaker. This means a small fixed salary.

4. We need to obviate the present lack of administrative direction. We must weld these magistrates and the county judge into a single organized body answerable to a single will and so responsible to the public. This is best done by considering the magistrates to be in a sense deputies of the county judge. They are to be an extension of his person reaching out to every homestead in the county. To accomplish this the judge must have power over the magistrate, and this can be granted in several ways:

(*a*) One way is to permit the county judge to discharge a magistrate at will. Some check could be imposed upon this power.

(*b*) A second way is to permit the county judge to take into his own hands any cause begun before a magistrate at any time before judgment is rendered.

As to the nature and extent of jurisdiction of the magistrates? What we wish, virtually, is to give to those magistrates who develop genuine ability a large place in adjudicating their neighbors' controversies, and to afford easy relief from the personal limitations of the less capable. It would be unfortunate to have a narrow jurisdiction fixed rigidly, for there is fair presumption that the office would attract more intelligence and disinterestedness than the office of justice of the peace in traditional form. In most localities there is some worthy citizen, a natural leader, who could, under an ideal tenure, render a very high service through conciliatory methods and informal procedure, and he should be given large scope for developing his capacity as judge and peacemaker.[33]

Such a system as Mr. Harley has described ought to go far toward restoring the magistracy to a position of respect

[33] "The County Judiciary," being an address read at the First Conference for Better County Government in New York State, held at Schenectady, N. Y., Nov. 13-14, 1914.

in the community and toward the development of a greater respect for law generally. It ought to help bring justice within the reach of all. Too often our courts have been less effective in the promotion and administration of justice than in the delay and defeat of justice. Sometimes it has seemed as if court procedure was less designed to expedite justice than to multiply the fees of the legal profession. Quite often court costs have been out of all proportion to the equity involved if it is a civil issue, and out of all proportion to the fine or sentence imposed in criminal cases. So far as possible, courts should be supported by those who use them, but that does not mean that courts exist in order to provide a living for the court officials. The wide-spread use of the fee system has tended to produce that effect.

THE SUPERIOR COURT

Organization:

The organization of the superior court is prescribed in the constitution of the state. It provides that the state be divided into as many judicial districts as the General Assembly may deem necessary. Since 1875 the number of districts has been increased from nine to twenty, and in the last legislature (1927) an unsuccessful attempt was made to increase the number to twenty-seven, or at least twenty-four.

The constitution provides that a judge shall be elected for each district and that he shall reside in the district for which he is elected. The judges of the superior court are elected for an eight-year term by the voters of the entire state, but the legislature has the right to provide at any time that they be elected by the voters of their respective districts.[34] The General Assembly fixes the salary of the judges, and at the last session granted them an increase from $5,000 to $6,500, plus $1,500 for expenses.

The state is divided into two circuits of ten districts each, and a judge presides successively in each of the districts of his circuit. No judge may hold court in the same district oftener than once in four years, unless he is assigned to the district by the governor on account of the inability

[34] *North Carolina Constitution*, art. IV, sec. 21.

of another judge to fill his appointment. "The General Assembly may by general laws provide for the selection of special or emergency judges to hold the superior courts of any county or district when the judge assigned thereto, by reason of sickness, disability, or other cause, is unable to attend and hold said court, and when no other judge is available to hold the same."[35] Such emergency judges have the power and authority of regular judges. Resort has been made to emergency judges on several occasions within recent years because of congestion in the superior court dockets. The constitution requires that there be a term of superior court in each county at least twice in each year, to continue for such time as may be prescribed by law.[36] As a matter of fact, most counties have more than two terms of superior court in a year. No county has less than two weeks of criminal court and one or two weeks of civil court each year. The more populous counties have many weeks of court in a year. For instance, in Mecklenburg County the regular terms of civil and criminal court take up twenty-nine weeks, and most years there are five or six weeks of special terms.

A solicitor is elected for each judicial district by the voters of the district. His term of office is four years. It is his duty to prosecute on behalf of the state in all criminal actions in the superior courts and advise the officers of justice in his district.[37] At every regular term of the superior court for the trial of criminal cases, the solicitor is required to inspect the office of the clerk and report to the court in writing.[38] Although he is liable to a penalty for failure to perform this duty, it is apparent that it is sometimes done in a very perfunctory manner. The solicitor was formerly compensated on a fee basis, but since 1924 he has received a salary of $4,500 per annum, with an expense allowance of $750.[39] Before being placed on salary some of the solicitors were realizing handsome incomes. The solicitor's fees are still taxed in the bill of costs, except where the county pays the costs or the defendant is sentenced to the roads, and they are paid into the county school fund.

[35] *Ibid.*, sec. 11.
[36] *Ibid.*, sec. 10.
[37] *Ibid.*, sec. 23.
[38] *Consolidated Statutes*, 934.
[39] *Laws of 1923*, chap. 157, or *Consolidated Statutes*, vol. III, sec. 3891a.

Jurisdiction:

The jurisdiction and procedure of all the courts below the Supreme Court are determined by the General Assembly. The present jurisdiction of the superior court is as follows:[40]

Original jurisdiction. The superior court has original jurisdiction of all civil actions whereof exclusive original jurisdiction is not given to some other court; and of all criminal actions in which the punishment may exceed a fine of fifty dollars, or imprisonment for thirty days; and of all such affrays as shall be committed within one mile of the place where, and during the time, such court is being held; and of all offenses whereof exclusive original jurisdiction is given to justices of the peace, if some justice of the peace shall not within twelve months after the commission of the offense proceed to take official cognizance thereof.

Concurrent jurisdiction. In all cases in which by any statute original jurisdiction of criminal actions has been taken from the superior court and vested exclusively in courts of inferior jurisdiction, such exclusive jurisdiction is hereby divested, and jurisdiction of such actions shall be concurrent and exercised by the court first taking cognizance thereof. Appeals shall be, as heretofore, to the superior court from all judgments of such inferior courts: Provided that this section shall not apply to the counties of Cabarrus, Forsyth, Gaston, Mecklenburg, Union and Surry.

Appellate jurisdiction. The superior court has appellate jurisdiction of all issues of law or of fact, determined by a clerk of a superior court or a justice of the peace, and of all appeals from inferior courts for error assigned, in matters of law, as provided by law.

CLERK OF THE SUPERIOR COURT

Election and Qualification:

The constitution provides that a clerk of the superior court for each county shall be elected by the qualified voters thereof. The term of office is four years, the election years being 1922, 1926, and quadrennially thereafter. In case the office becomes vacant otherwise than by the expiration of the term, it is filled by appointment of the judge of the superior court for the county.[41]

At the first meeting of the board of county commissioners after the election or appointment of a clerk of the superior

[40] *Consolidated Statutes*, 1436-1439.
[41] *North Carolina Constitution*, art. IV, secs. 16, 17, 29.

court, the latter must deliver to the commissioners a bond, with sufficient sureties to be approved by them, to the amount ordinarily of ten thousand to fifteen thousand dollars. This is to insure protection to those funds which pass through the court. In case a clerk fails to give bond and qualify as required by law, the chairman of the board of commissioners must immediately inform the resident judge of the district, who declares the office vacant and proceeds to fill the same by appointment.[42]

The board of commissioners must provide the clerk of the superior court with an office in the courthouse, or in some other building at the county seat. He must also be provided with the necessary stationery, records, furniture, and filing cases. All books of record must be indexed and open to public inspection. The law requires that the clerk, or his deputy, shall be at his office daily, Sundays and holidays excepted, from nine to three o'clock, and longer when necessary for the dispatch of business.[43]

Deputies and Assistants:

The clerks of the superior court may appoint deputies who can perform any duties of the office except those of a judicial nature, but for whose actions the clerks are responsible. When a deputy is appointed, the fact is recorded in the office of the register of deeds, and when the appointment is revoked, that fact is also recorded. A similar record is kept in the special proceedings docket of the court. This double record is designed as a safeguard in case any question should arise as to the regularity of the appointment.[44]

A clerk of the superior court, by and with the written consent and approval of the superior court judge resident in his district, may appoint an assistant clerk of the superior court, the judge confirming the appointment. Such assistant clerk, after subscribing to the oath prescribed for clerks, is authorized and empowered to perform all the duties and functions of the office of clerk, and all the acts, orders, and judgments of the assistants are entitled to the same faith and credit as those of the clerk himself. He is subject in all

[42] *Consolidated Statutes*, 926-931. [43] *Ibid.*, 933, 945. [44] *Ibid.*, 936-937.

respects to all laws which apply to the clerks.[45] Nevertheless, the clerk of the superior court is held responsible for the acts of the assistant clerk, and his official bond must be written to cover the acts of the assistant. The appointment of an assistant clerk may be revoked at any time by the clerk who made the appointment or by the judge of the district. As in the case of deputies, a double record of appointment and revocation is kept. The essential difference between a deputy and an assistant clerk is that a deputy clerk cannot be given the power to discharge judicial functions, whereas an assistant clerk can perform any duties performed by his superior.

Powers and Duties of the Clerk of Superior Court:

The clerk of the superior court occupies a position of influence and responsibility. He is not only the secretarial officer of the court but, between terms, he exercises many of the powers of the court. Furthermore, he is a judge on his own account. He can hear evidence and render judgment in special proceedings; he is judge of probate; and he is judge of the juvenile court. He has a multitude of records to keep, involving a great amount of clerical work. The office is one that demands a man of alertness and versatility and with the qualities of a judge.

The powers and duties of the clerk may be more easily understood if they are classified into two general divisions: first, those which he exercises or performs as an officer of the superior court, and second, those which he possesses as an independent judge. A third class of duties are mainly clerical, the clerk's office being a depository for numerous records, judicial and otherwise. We shall attempt to classify his duties in these categories.

As a Secretarial Officer. The clerk of the superior court is the secretarial officer of that court. When the court is in session he must be in regular attendance to swear witnesses and jurors, impanel juries, issue subpoenas or other writs, supply any original papers called for, and render such other assistance as he can. He must keep a record of all proceedings, in the order in which they occur, and make such other

[45] *Public Laws of 1921*, chap. 32, or *Consolidated Statutes*, vol. III, sec. 934a.

entries in his minute docket as the judge may direct. Another duty is to keep a record of the attendance of jurors and witnesses, ascertain the mileage which each has traveled, and make out their tickets (orders on the treasurer).[46] It is the duty of the clerk to make up an itemized statement of the bill of costs in every criminal action tried or otherwise disposed of, and the costs become a part of the judgments.[47] In all criminal actions where the county is liable in whole or in part for costs, it is the duty of the clerk to make out a statement of such costs within thirty days and file the same with the county commissioners.[48] Following every order or judgment of the court, the clerk issues the proper writ and delivers it to the sheriff to be executed, endorsing on it the date of issuance.[49]

After the adjournment of a term of court the clerk must assemble all the papers belonging to the court, place the papers in each action in a separate roll, properly label them, and file in the order of the date of final judgment.[50] He must make the necessary entries in the judgment docket and prepare new trial dockets for the cases continued.

Between the terms of court the clerk "has jurisdiction to hear and decide all questions of practice and procedure, and all other matters over which jurisdiction is given to the superior court, unless the judge of the court or the court at a regular term is expressly referred to."[51] Practically all cases tried in the superior court are begun and ended by the clerk, he issuing the original summons and the final execution. He has the power to administer oaths and take acknowledgments; to issue subpoenas to compel the attendance of witnesses, or to compel the production of any bond or paper material to an inquiry pending in his court; to issue commissions to take the testimony of any witness within or without the state; to issue citations and orders to show cause to parties in all matters cognizable in his court, and to compel the appearance of such parties; to enforce all lawful orders and decrees, by execution or otherwise, against those who fail to comply therewith or to execute lawful process; to preserve order in his court and to punish contempts;

[46] *Consolidated Statutes*, 3892-3893. [47] *Ibid.*, 1228, 1232, 1242.
[48] *Ibid.*, 1259-1264. [49] *Ibid.*, 951. [50] *Ibid.*, 949. [51] *Ibid.*, 403.

to adjourn any proceeding pending before him from time to time,[52] and to enter the following judgments: (*a*) all judgments of voluntary nonsuit; (*b*) all consent judgments; (*c*) all actions upon notes, bills, bonds, stated accounts, balances struck, and other evidences of indebtedness within the jurisdiction of the superior court; (*d*) certain judgments by default.[53]

The above is not a complete list of the powers exercised by the clerk between terms, but enough have been mentioned to indicate the sweep of his authority. Many of these are judicial powers, but the clerk simply represents the court, which is acting through him. Orders or judgments rendered by the clerk may be appealed to the judge at the next term. In most actions the clerk cannot render final judgment; he simply advances the cases through the initial stages. No action can be terminated by him if issues have been joined.

The dockets and judicial records kept by the clerk will be listed in a subsequent paragraph, although the keeping of these records is a part of his work as a court officer.

As a Judge. In this state the clerk of superior court exercises the duties of a judge of probate. In exercising the powers and jurisdiction of a probate judge he is not acting for the superior court but as an independent tribunal of original jurisdiction.[54] In many states there is a separate official for this work. The probate judge approves or acknowledges all instruments brought in for registry in the office of the register of deeds.[55] Such instruments include deeds, mortgages, deeds of trust, assignments, powers of attorney, and long-term leases. The signature of the clerk is accompanied ordinarily by his official seal.

The probate judge has numerous duties in connection with the settlement of estates. He has power to take proof of wills and grant letters testamentary and of administration (that is, qualify executors and administrators); to revoke letters testamentary and of administration; to appoint and remove guardians of infants, idiots, inebriates, and lunatics; and to audit the accounts and final settlements of executors, administrators, collectors, receivers, commissioners, and

[52] *Ibid.*, 938.
[53] *Ibid.*, 476.
[54] Helms *v.* Austin, 116 N. C. 753.
[55] *Consolidated Statutes*, 3293.

guardians. In case no one qualifies as a guardian the judge of the superior court may appoint the clerk temporary trustee with authority to invest funds on hand belonging to the ward. In any county the clerk may appoint, if he feels there is a need therefor, a public administrator. Rarely is such an appointment made, however.

The clerk has the powers of a judge in all special proceedings. It is not easy to define the term "special proceeding." According to the *Consolidated Statutes*,

> Remedies in the courts of justice are divided into (1) Actions and (2) Special proceedings. An action is an ordinary proceeding in a court of justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment or prevention of a public offense. Every other remedy is a special proceeding.[56]

The Supreme Court of North Carolina ventures the following:

> Any proceeding that under the old mode was commenced by *capias ad respondendum*, including ejectment, or by a bill in equity for relief, is a civil action. Any proceeding that under the old mode might be commenced by petition, or motion upon notice, is a special proceeding.
>
> The summons in all civil actions is returnable before the judge in term-time, and the summons in special proceedings is returnable before the clerk in his office at any time.[57]

In a broad sense special proceedings include those matters which are brought into the court for settlement but which do not involve a suit. Proceedings for dower, partition, and widow's year's allowance are examples of special proceedings.

Finally, the clerk of the superior court is judge of the juvenile court.[58] His duties in this connection are discussed in the chapter on public welfare and need not be presented here.

Clerical and Miscellaneous Duties. The clerk of the superior court has a variety of duties to perform which do

[56] *Ibid.*, 392, 393.
[57] Tate *v.* Powe, 64 N. C. 644.
[58] *Consolidated Statutes*, 5040.

not belong strictly to either of the above categories. While mainly clerical, some of them are quasi-judicial. Among these miscellaneous duties are the following:

1. Qualify and keep a record of justices of the peace. Require reports from them at each term of superior court. Receive and file their dockets when they are filled. See that all records, papers, dockets, and books held by a justice of the peace are delivered, upon the expiration of his term, to his successor. C. S. 1467, 4631, 1484, 1485.

2. Qualify and keep a record of notaries public, and issue notarial certificates. The clerk himself may act as a notary public. C. S. 3173, 3174.

3. Administer oaths to the members of the board of county commissioners.

4. Notify the county commissioners of the financial condition of surety companies in the state, in which any officer of the county has been bonded. C. S. 340.

5. Examine, with the assistance of a physician, persons alleged to be insane, and if found insane commit them to an insane asylum. C. S. 6190-6197.

6. Commit criminals to the road camps or to the penitentiary.

7. Serve with three reputable ex-Confederate soldiers on the county board of pensions. This board is required on the first Monday of each July to revise and purge the pension list. Pension checks are transmitted semi-annually from the state auditor to the several clerks of superior court, who must deliver them to the pensioners or to their sworn representatives. The clerk must post on the courthouse door a list of the pensioners to whom he has delivered warrants. Speculation in pension claims is a misdemeanor. C. S. 5156-5168.

8. Keep election returns and poll books. C. S. 5952, 5990.

9. Furnish blank process, bonds, or other forms to justices of the peace, notaries, or other parties having use for them. C. S. 948.

10. Issue hunters' licenses. *Public Laws of 1927*, chap. 51, sec. 27.

11. Make up and transmit to the State Commissioner of Revenue on or before the tenth day of each month a list of

persons who died during the previous month and whose estates are subject to the inheritance tax. The clerk must keep a public record of the settlement of inheritance taxes on each estate, together with a copy of the receipt showing payment. 1927 Revenue Act, sec. 16.

12. Pay out money for indigent children from funds paid into the court for them. C. S. 962.

13. Report criminal statistics to attorney-general after each term of criminal court. C. S. 955.

14. Make an annual report of all public funds in his hands to the county commissioners. C. S. 956.

15. Advertise unclaimed fees of jurors and witnesses for three consecutive years and if not called for turn over to the school fund. C. S. 960.

16. Keep the following records, which shall be open to the inspection of the public during regular office hours: (1) Summons docket, containing a brief note of every proceeding in each action, up to the final judgment inclusive; (2) Judgment docket, giving the substance of every judgment and every proceeding subsequent thereto; (3) Civil issue docket, containing issues of fact joined upon the pleadings, and of all other matters to be heard before the judge; (4) Cross-index to judgments; (5) Cross-index of parties to actions; (6) Records of *lis pendens* (notice of pending litigation over land); (7) Criminal docket, containing a note of every proceeding in each criminal action; (8) Minute docket of superior court, containing a record of all proceedings during a term of court, together with such entries as the judge may direct to be made therein; (9) Special proceedings docket, containing a record of all writs, summonses, petitions, or other original process issued by the clerk, or returnable to his office, and not returnable to a regular term. This docket also contains a brief note of every proceeding up to the final judgment inclusive; (10) Minute docket of proceedings before clerk, with a record of all proceedings had before the clerk, in actions or proceedings not returnable to a regular term of court; (11) Record of wills, together with the certificates of probate; (12) Record of appointments of executors, administrators, guardians, and collectors, and of revocations of all such appointments; (13) Record of orders

and decrees passed in the clerk's office; (14) Record of accounts, containing a record of inventories and annual accounts of executors, administrators, guardians, etc.; (15) Record of settlements, showing final settlements of administrators, guardians, etc.; (16) Record of those who have served as jurors; (17) Record of justices of the peace in the county; (18) Record of books and records delivered to the justices of the peace; (19) Cross-index of wills; (20) Cross-index of executors and administrators; (21) Cross-index of guardians; (22) Record of fines and penalties paid into the court; (23) Record of liens filed; (24) Record of appointment of receivers, together with the inventories, reports and accounts filed by them; (25) Record of corporations; (26) Accounts of indigent orphans; (27) Register of physicians and surgeons; (28) Register of dentists; (29) Register of chiropodists; (30) Register of trained nurses; (31) Permanent roll of registered voters; that is, those entitled to permanent registration under the so-called "grandfather clause"; (32) Lunacy docket, containing a record of the examinations of persons alleged to be insane, of the proceedings and of the findings; (33) Record of county treasurer's reports, containing a statement of all fines and penalties received by him; (34) A record of all cases in criminal actions in which a *nolle prosequi* is entered. These are criminal actions in which the indictment has been pending for two terms of court and the defendant has not been apprehended and consequently the case is taken off the docket but may be restored upon application of the solicitor; (35) Record of permits issued to purchase deadly weapons (1-35 inclusive, C. S. 952); (36) Record of drainage transactions, together with copies of all maps and profiles (C. S. 5336); (37) Register of architects (C. S. 4998); (38) Record of businesses operating under assumed names (C. S. 3289); (39) Record of mortgage sales; (40) Record of judgments and liens; (41) Record of the adoption, amendment, or repeal of a charter by any municipality within the county (C. S. 2910).

It is needless to say that in the average courthouse not all of these records are kept, or they are not kept with any degree of completeness.

Popular Election Criticized:

It is obvious that the clerk of the superior court, if he is to meet the demands of his office, should have a liberal education and at least a fair knowledge of law. There are many phases of the work that can be learned only by experience. The best clerks admit that it took them a year or more of diligent application to learn the office.

Logically the office should be given only to one who has served an apprenticeship as a deputy or assistant, but so long as the position is filled by popular election, that will not be the practice. Occasionally a successful deputy is rewarded by his party with the nomination for clerk, but more often the nominations to all offices are pledged to party workers. The deputy has no chance for promotion unless he is a party regular.

In those counties where it has become a custom to continue a clerk in office term after term, popular election has no damaging effect. In Polk County there have been only five incumbents since the formation of the county in 1855. The clerk in Edgecombe County has held office for sixteen years, and the people are so thoroughly satisfied with his work that he never has to campaign for re-election. On the other hand, there are counties where a change is expected every four years. Fortunately the term is four years instead of two. To be constantly "breaking in" a new clerk is a trial to the solicitors and an obstacle to the administration of justice. A new clerk is bound to be quite helpless for the first few months unless he is assisted by an experienced deputy or an ex-clerk.

Some clerks never attempt to familiarize themselves with the duties of their office but continue throughout their terms to depend on deputies. This arrangement may insure satisfactory work, but it imposes upon the taxpayers the necessity of supporting two men to do the work of one, and usually the deputy who does the work receives less pay than his impotent chief.

The popular election of an official with duties as technical as those of the clerk of superior court is illogical and unsound. Prior to the establishment of the Reconstruction

government the clerk was appointed by the court, and such should be the practice now. He should be appointed by the resident judge from an accredited list of candidates who have served apprenticeships as deputies and have passed rather searching examinations. The office ought to offer a career to ambitious young men and not be dispensed quadrennially as party spoils.

Fees and Salaries:

The theory has prevailed—and perhaps it is correct—that the services performed by the clerk of court, the sheriff, the magistrates, and the register of deeds benefit individuals rather than the community as a whole, and hence these offices should be supported by fees. Consequently the law has fixed a definite fee for every service which any of these officers is ever called upon to perform.

The official fee bill for the clerk of superior court, which he is required to keep posted in a conspicuous position, lists seventy-five fees and commissions.[59] In certain cases, such as taking an affidavit or probating a deed, the individual who is directly benefited pays for the service. In a civil suit the bill of costs usually becomes a part of the judgment to be paid by the losing litigant. In a criminal action the costs are charged to the defendant if he is convicted and able to pay.[60] If the defendant is acquitted, or is convicted and sentenced to the penitentiary or to the roads, the county becomes liable for the costs. The county pays only half-fees, however, except in capital cases and in prosecutions for forgery, perjury, or conspiracy.[61]

Until a few years ago it was the universal custom for the fees of an office to be retained by the official as his compensation. The fees were presumed to be only large enough to support the office. If the volume of business increased, so also did the expenses, the office-holder being required to pay his own assistants. No record of his fees was required, because they were considered the emoluments of his office and of no concern to the public. If he wished to remit a fee it was considered his privilege, and if he failed to collect in

[59] *Consolidated Statutes*, 3903. [60] *Ibid.*, 1267. [61] *Ibid.*, 1259-1262.

every case it was his loss. While this method of compensation has been pretty generally discarded elsewhere, it is still in use in a third or more of the counties of this state.

The fee basis of compensation has been overthrown pretty largely because of certain inherent evils in it. In the first place, it does not insure an income commensurate with the demands of the office. In a small rural county the clerk's office, for instance, may not yield enough to attract and hold a competent man, while in an urban county it may yield an unreasonably lucrative income. In the main, however, expenses tend to expand with the volume of business done, so that this is not a valid argument except in extreme cases. A more serious evil is the practice of remitting fees for political reasons. If an official is a candidate for re-election he is severely tempted to prostitute his office in this way. Even when an official dislikes this sort of thing, the people will not let him forget that he is under obligations to them. When an official is on salary and turns the fees over to the county he can demand cash, and no one objects to paying cash; but if he retains the fees many will ask him to "run accounts" for them. Of course many of these accounts are never paid.

Perhaps the greatest objection to the fee system lies in its ignoring the fact that a public office is a public trust. The people are denied information about their own government, to which they are entitled. The official is apt to get an idea that he has a vested right in the office.

On the other hand, there is something to be said for the fee system, especially in the counties doing a comparatively small volume of business. It is quite possible that it stimulates an officer to greater activity and thus makes for economy of administration. It has been quite noticeable that a sheriff or clerk will find need for an extra deputy very soon after he is put on a salary, that is, if the deputies are on salaries too. Of course, this could be overcome by having the chief pay his own deputies. Unless there is very careful accounting there is a temptation for an official who has been placed on salary not to report all of the fees. It is fairly easy to check up on the register of deeds, but it is not so easy to check up on the sheriff and the clerk of court.

The writer feels that the clerk of superior court ought to be appointed rather than elected; he ought to serve during good behavior; he ought to be paid a respectable salary; and the office ought to be given such dignity that it would attract and offer a career to capable men. The office of register of deeds should also be appointive and salaried. It need not pay a large salary, but sufficient to attract a capable stenographer who can bear responsibility. The sheriff's fees differ from the others in that they are not net; there is always an element of expense in them. For that reason there is some justification for compensating him on a fee basis supplemented, if necessary, by a moderate salary.

It would avoid confusion if the fees for identical services were uniform throughout the state. This is not the case now, because a large number of counties have secured special acts increasing the fees in one or more of their offices.

In the counties which have adopted the salary basis of compensation, it is customary to deposit the fees in a "fee and salary fund" and then pay the salaries out of this fund. In some cases the fund is sufficient to pay all of the court-house salaries, not merely those which are paid in lieu of fees. There is some question as to the ethics of this method of raising revenue. If counties are realizing an excess because of higher fees than the state schedule, the fees should be reduced. If the normal fees yield an excess above the cost of operating there is nothing to criticize. Instead, the county should be commended.

JURORS

The Jury List:

Every two years the county commissioners, at their regular meeting in June, are required to prepare a jury list.[62] The method is to take the tax books for the preceding year and select the names of all persons (men) who have paid their taxes, are intelligent, and are of good moral character. A list of the names thus selected is made out by the clerk of the board and preserved until the July meeting. On the latter date the names are copied on small scrolls of

[62] *Consolidated Statutes*, 2312.

paper of equal size, one name on each scroll. These are deposited in a box prepared for the purpose. It contains two compartments, one for the names which have been drawn and the other for the names still undrawn. Originally all the scrolls are put in the "undrawn" compartment. The box is securely locked, the sheriff keeping the key to one compartment and the chairman of the board the key to the other compartment.

Drawing a Jury:

At least twenty days before each regular or special term of the superior court, the board of commissioners causes to be drawn from the jury box out of compartment No. 1 (undrawn), by a child not more than ten years of age, a panel of jurors for the approaching term of court.[63] The number of names drawn varies in different counties and also depends on whether it is to be a civil or a criminal term. Ordinarily, for a criminal term of one week thirty-six scrolls are drawn. As the names are drawn they are copied down by the clerk and the scrolls deposited in compartment No. 2.

In actual practice many more scrolls are drawn out than the number of jurors desired. Of the names drawn some will be thrown out because the persons mentioned have moved away or died; others may be rejected because they are known to be hard of hearing; another, because he is carrying mail or working on the railroad; another is ineligible because he has a case in court; and others because they have served as talesmen within two years. Some are rejected because they are known to be "cranks," and others because they are unknown to any of the commissioners, or to the clerk, or to the sheriff. This may not be a justifiable reason for throwing out a name, but it is a common practice. Finally, some are rejected because they are known to be, or are suspected of being, criminally inclined or in league with criminals. While this is sufficient reason for keeping a man off the jury it would be better to keep his name off the jury list. If a board happened to be composed of men who favored leniency toward the law-breaker, they might fill up the jury with men who shared their views and reject those

[63] *Ibid.*, 2314.

who were known to favor rigid enforcement. A jury can be packed either way if those who draw the names have too much discretion. The purging should be done in preparing the original list and not at the time of drawing. Of course, there is room for mischief even there. On the whole, the county commissioners probably try to be perfectly fair.

Impaneling a Jury:

The clerk of the board of county commissioners is required, within five days from the drawing, to deliver the list of the jurors drawn for the superior court to the sheriff of the county, who shall summon them to attend the court. The summons must be served personally, or a copy of the summons left at the house of the juror at least five days before the court is to convene.[64] A juror who fails to appear or to give his attendance until duly discharged, and fails to render an excuse satisfactory to the court, is subject to a penalty of twenty dollars.

If the court is being convened for the trial of criminal cases the names of all the persons returned as jurors are written on scrolls of paper and put into a box or hat and drawn out by a child under ten years of age. The first eighteen drawn constitute the grand jury for the court,[65] and the rest serve as petit jurors. If thirty-six names have been drawn there are eighteen petit jurors from which to secure a panel of twelve for each case. Probably some of the eighteen ask to be excused because of sickness at home or other emergencies.

In selecting a jury for a case the court or the counsel on either side may challenge a juror on numerous grounds. A juror may be dismissed if he is found to be a relative of the defendant in a criminal cause or of either party in a civil suit. A juror may be dismissed for having formed an opinion in regard to the case or for various other reasons.[66] Each party in the suit, or the counsel for each, may challenge peremptorily four jurors without showing any cause therefor.[67]

[64] *Consolidated Statutes*, 2320.
[65] *Ibid.*, 2333.
[66] *Ibid.*, 2329; also State *v.* Lacy, 187 N. C. 581.
[67] *Consolidated Statutes*, 2331.

After the challenging there may not be twelve acceptable jurors left, in which case the jury is completed by the use of talesmen. The sheriff, by order of the court, calls upon bystanders who are freeholders of the county to come forward, and, if unchallenged, they enter the jury box. When twelve men, acceptable to the court and to counsel, have been secured, the clerk impanels them to hear the case. Tales jurors may be discharged from day to day, or may serve throughout the week. Quite often two petit juries are used, one hearing a trial while the other is deliberating. This speeds up the work of the court, but involves the use of many talesmen. There are certain individuals in every county who attend court with regularity in the hope that they may get on the jury for a few days. Although it is a cause for challenge to have served as a juror within two years, one is not necessarily rejected therefor. The professional juror has sometimes proved a nuisance. Sometimes those who have cases to be tried see to it that a number of their friends happen to be in the courthouse when talesmen are being selected.

Trial by jury has long been considered one of the greatest guarantees of human liberty and is, of course, a great improvement over the more primitive methods of combat and ordeal. Nevertheless, trial by jury is not esteemed as it once was. It is now recognized that it very often results in a miscarriage of justice. Yet it is not worth while to urge the overthrow of the jury system; any other method of judicature would have its faults. It is possible, however, that the jury could be dispensed with in minor criminal cases and in most civil cases, and that jury trial, where continued, could be improved by a more careful selection of the jurors.

The Grand Jury:

Criminal prosecutions in the superior court must be based on an indictment by a grand jury. This jury consists of not less than sixteen nor more than twenty-three jurors, in this state eighteen being the usual number. A vote of twelve is necessary to indict. The manner in which the grand jury is selected has already been indicated.

The solicitor of the district collects the evidence and prepares most of the cases that come before the grand jury, and his advice and influence largely determine what indictments are brought. Nevertheless, he cannot compel a grand jury to indict. An indictment means that the grand jury, after examining one or more witnesses, is satisfied that there is probable cause and that a trial is warranted. In legal parlance the grand jury finds "a true bill," or failing to indict, "not a true bill." The judge appoints one of the members of the grand jury foreman and he has power to administer oaths to persons to be examined. The foreman acts as spokesman for the grand jury except when the indictment is for a capital offense, in which case the entire body speaks.

A prosecution may in some instances start with the grand jury. If any of its members have knowledge or a reasonable belief that there has been some violation of the law they may make a presentment to the solicitor, and at the next term witnesses are summoned and a bill of indictment found as in any other criminal cause. This is a very important power but one which has been little used. Perhaps one reason why it has been used so infrequently has been the practice of choosing a new grand jury with each term of court. By the time the members get acquainted and are working well together they are discharged. In several counties grand juries are now chosen to serve for six months or a year, with only half of the members retiring at a time. This enables the grand jury to become a working organization, and it ought to make it a more effective instrument for law enforcement.

The grand jury has still another important power. It is required at each term of court to examine the county insitutions and all county property. Committees are selected to visit the jail, the county home, the convict camps, and all other county institutions and report conditions.[68] Attention is given to the physical condition of the courthouse and other public buildings. Each office is supposed to be inspected to see if it is being administered in a proper and efficient manner. The inspection includes an examination

[68] *Consolidated Statutes*, 2337.

of the vaults in which the county records are deposited to observe the degree of protection which is afforded.

The reports and recommendations of the grand jury are often quite superficial. Sometimes deplorable conditions at the jail or at the county home completely escape the notice of the jurors. The examination of the county offices is only perfunctory, and almost invariably the comments are complimentary. On the other hand, the grand jury is not incapable of making extravagant and impractical recommendations. In one county the grand juries have repeatedly reprimanded the commissioners and even indicted them because they do not erect a new and modern courthouse. As a matter of justice the commissioners should be commended for resisting an extravagant and unnecessary expense.[69]

Many students of judicial reform are of the opinion that the grand jury serves no very useful purpose and that it should be abolished. The Federal Supreme Court has held that indictment by grand jury is not an essential step in "due process of law," and hence so far as the federal constitution is concerned the states are free to eliminate the grand jury altogether. In a few states it has been eliminated, and several other states permit the prosecutor to bring suit "on information" without grand jury indictment, even though the institution itself is still retained.[70] The abolition of the grand jury in North Carolina would result in a considerable saving to the taxpayers and probably make no appreciable difference in the prosecution of criminals.

THE SHERIFF

Origin and Early History:

The office of sheriff has existed for fully a thousand years, originating in Saxon England before or during the reign of Edgar (944-975 A.D.). At first the sheriff was appointed and removable by the king. The earliest records

[69] County Government Studies, Department of Rural-Social Economics, University of North Carolina.

[70] Grand juries have been abolished in Michigan, Wisconsin, Minnesota, and perhaps in other states. Fairlie, *Local Government in Counties, Towns and Villages*, p. 103.

indicate that he was the guardian of the peace, a summary court officer, and had judicial, fiscal, and military functions.

The Normans, after the conquest of Britain, added to the office the functions of the Norman *vicomte*, and during the early Norman period the sheriff rose to a position of great influence and power. The office was shorn of some of its powers by the granting of Magna Charta, and thereafter it continued to decline, though it never ceased to be an important office.

The sheriff was one of the first officers to appear in the American colonies, appearing in Virginia as early as 1634 and in Massachusetts in 1691. There was no sheriff in name in North Carolina until 1738, but the provost marshal of the proprietary period was practically the same as sheriff. The colonial sheriff was regarded as a colonial officer even though his jurisdiction was limited to a county. In none of the colonies was the sheriff elected by the people. His powers and duties varied in the different colonies, though he was always the chief peace officer, having the ancient power of *posse comitatus*. He was also the jailer, the executive officer of the court, and chief election and returning officer.[71] In some of the middle and southern colonies he was also chief fiscal agent or tax collector. Such was the case in North Carolina, and so it has remained, with few exceptions, until the present time.

Election and Qualifications:

The sheriff in this state is a constitutional officer, elected by the voters of the county for a term of two years.[72] The sheriff has been popularly elected longer than any other county officer, or since 1829. He is eligible to re-election. He is independent of the other county officers, with the exception that he must account with the board of commissioners for taxes collected. He can be removed by the judge of the superior court for any of the following causes: (*a*) willful or habitual neglect or refusal to perform the duties of his office; (*b*) willful misconduct or maladministration in office; (*c*) corruption; (*d*) extortion; (*e*) intoxication or conviction of

[71] See p. 10.

[72] *North Carolina Constitution*, art. IV, sec. 24.

intoxication; or (*f*) conviction of a felony.[73] The judge may suspend a sheriff from office until the cause is heard in the superior court if, in his judgment, the charges are well supported.

To be eligible to the office of sheriff one must be twenty-one years of age and a resident of the county for one year preceding his election. He cannot be a member of the General Assembly nor a practicing attorney. Neither is a former sheriff eligible if he has failed to make full settlement of the taxes which were due by him.[74]

If a vacancy occurs in the office of sheriff, the coroner executes all process directed to the sheriff until the vacancy is filled by the county commissioners.[75]

Sheriff's Bonds:

The sheriff is required to execute two bonds. One is conditioned upon the collection and settlement of county and other local taxes according to law, the amount of the bond not exceeding the amount of taxes for the previous year. The second bond is conditioned upon the due execution and return of process, payment of fees and moneys collected, and the faithful execution of his office as sheriff. The amount of this bond is fixed by the county commissioners but can not be in excess of five thousand dollars. A third bond was demanded so long as the sheriff collected taxes for the state.[76]

The commissioners are required to take and approve the official bonds of the sheriff, and cause them to be registered and the originals deposited with the clerk of superior court for safe keeping. The law requires that the bonds shall be taken on the first Monday of December following the election of a sheriff, but that no board shall permit a former sheriff to give bonds for or re-enter upon the duties of the office until he has settled for all previous taxes which he has or should have collected. It is the duty of the commissioners, whenever they are of the opinion that the bonds of the sheriff are insufficient, to require him to give other and better sureties, or justify the sureties on his bonds. In case he fails to do so,

[73] *Consolidated Statutes*, 3208, 3928.
[74] *Ibid.*, 3926, 198.
[75] *Ibid.*, 3929.
[76] *Ibid.*, 3930.

it is their duty to elect some suitable person in the county as sheriff for the unexpired term, who in turn shall give proper and lawful bonds. If the commissioners fail in the performance of this duty they may be liable for all loss sustained in the collection of taxes. The sureties to a sheriff's bond are liable for all fines and amercements imposed on him, in the same manner as they are liable for other defaults in his official duty.[77]

Defalcations by sheriffs have been numerous in the state. Hardly a year passes that there are not several counties which experience this kind of misfortune. Quite often the counties lose money. Either the sheriff is not sufficiently bonded, the commissioners compromise with him, or they compromise with the bondsmen. In any case the taxpayers lose as a result of the commissioners' negligence and leniency. Yet the writer has never heard of a case where the commissioners have been prosecuted.

Status of the Sheriff:

Many students of political science maintain that the sheriff is a state officer rather than a county officer. Technically they are right, for in law the sheriff is considered as an agent of the state government and not as a local official. As conservator of the peace in his county he is the representative of the sovereign power of the state, his prisoners are prisoners of the state, and he executes the orders of the court in the name of the people of the state. In the performance or in the neglect of these duties he is not responsible to the county board nor to the county electorate. He is indeed a state officer. Yet one important element must be supplied before he can be considered a state officer in the fullest sense. That is a more direct and vital relationship with the state government.

Dr. Kirk H. Porter states the situation very aptly in these words:

> The contention that the sheriff is a state officer would be greatly strengthened if he were appointed by, or at least were under the control of, some state authority. This is not the case, except

[77] *Ibid.*, 3932.

in one state. Hence there is no organic relation between his office and the state government. And despite the theory that he represents the people of the state as a whole, he is elected by the people of a county, he has been identified with the county for many centuries, and what is of greater significance his policies in the matter of interpreting and enforcing state law are largely dictated by the county electorate. Thus it is entirely proper to look upon the sheriff as a county officer. But even so it must not be forgotten that he is somewhat apart from the county organization and is a representative of the state in a sense that most of the other county officers are not.[78]

The fact that the sheriff is county tax collector in North Carolina makes him more of a county officer than are the sheriffs who do not exercise this function. This is especially true since he ceased to collect state taxes.

The sheriff in this state has four main functions. He is the executive officer of the court; he is conservator of the peace; he is custodian of the jail; and, except in a few counties, he is tax collector. His duties in connection with each of these functions will now be considered.

The Sheriff as Executive Officer of the Court:

The sheriff has many important duties as the executive officer of the superior court. Before each term he summons the jurors and witnesses, serves warrants on persons who have been indicted, and has everything in readiness. During court he or one of his deputies must be in regular attendance to open and close the sessions, maintain order, wait on the jury, deliver prisoners to and from the courtroom, and perform various other services. Several deputies are often needed to deliver summonses and to execute the various orders of the court.

If there is a county court or a recorder's court the sheriff and his deputies act in the same capacity as they do in the superior court, serving writs, attending the sessions, and executing its orders and judgments. The clerk of court and the justices of the peace are constantly issuing writs for the sheriff to serve. Thus his duties as a ministerial officer of

[78] *County and Township Government in the United States*, p. 166.

the court (or courts) keep the sheriff occupied a good share of the time.

Court orders are classed under two heads, as mesne process and final process. The former includes all writs and orders from the beginning of a case up to, but not including, the final decree or judgment; and embraces summonses to defendants, warrants of arrest, subpoenas to witnesses, writs of attachment, and other orders. Final process is the execution of the judgment. In civil suits it involves the collection of the amounts awarded by the judgment, if necessary by the seizure and sale of property.

The sheriff, or his lawful deputy, must execute and make due return of all writs and other process legally issued and directed to him. He is subject to a penalty of $100 if he neglects to execute a process which was delivered to him at least twenty days before the sitting of the court to which the same is returnable, unless he can show sufficient cause to the court for his failure. If he makes a false return he is subject to a penalty of $500.[79] Punishment imposed upon a sheriff for failure to discharge an official duty is known as amercement. The ignorance of the sheriff's deputy, who makes a false return, does not relieve the sheriff from penalty.[80]

In all cases where a sheriff collects upon an execution placed in his hands, if there be no bona fide contest over the application thereof, the law requires that he shall immediately pay the same to the plaintiff or into the office of the clerk of the court from which the execution issued.[81]

Whenever a writ is delivered to the sheriff to be executed, he is required to endorse on it the date he receives it, and when he executes it, to endorse the date of execution.[82] The writer was informed in one county that the sheriff was so negligent and forgetful that he would often carry a paper in his pocket for days, or even weeks, before serving it.

The Sheriff as Conservator of the Peace:

The second major function of the sheriff is to maintain the peace in his county. Outside of the cities where there are organized police forces, the solving of crime mysteries, the

[79] *Consolidated Statutes*, 3936.
[80] Houser *v.* Hampton, 29 N. C. 333.
[81] *Consolidated Statutes*, 3940.
[82] *Ibid.*, 951.

apprehension of criminals, and the general maintenance of law and order are the responsibilities of the sheriff and his deputies. It is true that constables do some police work, but they are interested mainly in serving writs issued by the justices of the peace. The sheriff is the person to whom the country people must look for the suppression of crime and the maintenance of law and order. His jurisdiction extends over the entire county, including the towns and cities, but in practice he is usually quite willing to leave the matter of law enforcement within incorporated territory to the town or city police officers.

The sheriff is expected to be on the lookout for violators of the law or disturbers of the peace. An arrest may be made with or without a warrant. An officer may arrest without a warrant if he has "reasonable ground to believe that any felony has been committed, or that any dangerous wound has been given, or has reasonable ground to believe that any particular person is guilty . . . and may escape if not immediately arrested."[83] If the sheriff or any other officer makes an arrest without a warrant, he must, without delay, take the person arrested before a magistrate and give him a hearing. If a warrant has been issued before making the arrest, the disposition of the prisoner depends upon the nature and seriousness of the crime.

In making an arrest the sheriff may use as much force as is necessary to overcome any resistance that may be offered; he may break into a house or public building if he has demanded and been denied admission; and he may, if necessary, summon any person or persons to aid him.[84] "The sheriff is bound, *ex officio*, to pursue and take all traitors, murderers, felons, and other misdoers and commit them to jail for safe custody. For this purpose he may command the *posse comitatus*, or power of the county; and this summons everyone over the age of fifteen years is bound to obey. His power is largely a discretionary one. In all times of great emergency, or in a crisis of unusual danger, the limits under which his discretion may be exercised have been held by the courts not to be fixed."[85]

[83] *Ibid.*, 4544. [84] *Ibid.*, 4546. [85] Fairlie, *op. cit.*, p. 109.

In times of riots or serious disorders it rests with the sheriff what measures to take. If the disorder becomes so great that it cannot be controlled by his deputies and the *posse comitatus*, he may call on the governor of the state for militia and in extreme cases, through the governor, may ask for national troops.[86]

It is hardly necessary to point out that the sheriff is not an efficient police officer, nor should he be expected to be. Ordinarily, he comes into office without any training or experience in combating crime. Crime is becoming more and more professionalized. The modern criminal of the professional type operates through an organization; he travels in a high-powered car, and in an hour is fifty miles from the scene of his crime. What can a single untrained sheriff do in resisting banditry? What chance has he in apprehending such criminals? When crime becomes professionalized, so also must the crime-fighting forces. The city policemen are organized and trained, but the county sheriffs necessarily cannot be.

The highways, the small villages, and the open country can be protected only by an adequate patrol of state policemen who are permitted to operate anywhere within the state. Equipped with motorcycles they can cover relatively large stretches of territory and strike terror into the hearts of lawbreakers by the swiftness and uncertainty of their movements. In case of any serious disorder a large number of them can be assembled very quickly. One of the greatest services rendered by the state police is their patrol of the state highways. The fear of meeting at any minute a state policeman exercises a very wholesome restraint on drivers who are inclined to be reckless. So successful has the state constabulary proved in other states that North Carolina is seriously considering a similar institution, or at least a state highway patrol. It would be a mistake, in the writer's opinon, to limit the activities of a state police force to highway protection, important as that is. If a strong, well-disciplined police force of this kind is established, it should be used whenever and wherever it is most needed. The state troopers of New York and Pennsylvania are a wonderful

[86] *Ibid.*, p. 110.

aid to the local police officers of those states in an unlimited number of ways.

It might be supposed that the sheriff would be a satisfactory peace officer in the case of local offenders and petty offenses, but unfortunately he is no more efficient in this field than in combating professional crime. The reasons, however, are different. He can not out-maneuver professional criminals because he lacks training and facilities. He does not suppress the lawlessness and crime of the community because he lacks the inclination. The sheriff secures his office by popular election and he does not like to offend a voter if it can be helped. No city would dare to entrust the selection of its chief of police to a vote of the people; yet that is exactly what the county does. It is notorious that many of the sheriffs of the state are not in sympathy with the prohibition law and are very lax in its enforcement. On the other hand, there are many sheriffs elected who are brave and vigorous in the prosecution of crime. Where public sentiment is on the side of law enforcement, a capable and honorable sheriff will generally be elected. Where public sentiment is for lax enforcement, it is reasonable to expect the election of a sheriff who reflects this attitude.

There is another reason why many of the sheriffs are weak as police officers. They are elected for another purpose. The office is attractive because of the generous commission paid for collecting taxes. Many who have no interest in or capacity for police work are thus elected to the office. They turn the unpleasant and sometimes hazardous police work over to deputies whose chief interest is the amount of fees which they can collect. Even on this score the work is not appealing, for the fee for pursuing and arresting a criminal is not much greater than for serving a subpoena or a jury summons. The sheriff, as now chosen and with the present incongruous combination of duties, is not likely to be a vigilant and aggressive peace officer.

The Sheriff as Custodian of the Jail:

The sheriff has the care and custody of the jail in his county, and shall be, or appoint, the keeper thereof.[87]

[87] *Consolidated Statutes*, 3944.

CURRITUCK COUNTY JAIL

ORANGE COUNTY JAIL

Persons sentenced to a term in jail and persons confined in jail awaiting trial are in his care. He is responsible for the delivery of convicts sentenced to the penitentiary or to the roads.

If the sheriff or deputy or jailer allows a prisoner to escape after he has been arrested or imprisoned, the burden of proof rests upon the officer to show that the escape was not due to consent or negligence.[88] The officer must use due diligence and good faith to keep a prisoner, and as to whether he did or not is a question for the jury to decide. If the sheriff or jailer wantonly or unnecessarily confines those committed to his custody in any apartment in the jail other than that provided and designated by law, he is guilty of a misdemeanor.[89]

Whenever the sheriff has good reason to believe that the jail is in danger of being broken into for the purpose of killing or injuring a prisoner placed by law in his custody, it is his duty to call immediately on the commissioners of the county for a sufficient guard to protect the jail; if they fail to provide such protection, the commissioners and not the sheriff are responsible.[90]

The problems of jail administration are discussed in the chapter on public welfare and need not be introduced here. It is sufficient in this connection to point out that the sheriff is responsible for the custody of the county's prisoners.

The Sheriff as Tax Collector:

From the beginning the sheriff in this state has also been tax collector. The practice has persisted because there has been a general notion that neither tax collecting nor the ordinary duties of the sheriff would occupy an officer's full time and that the combination was an economy. This is far from the truth. The arrangement has, on the one hand, destroyed the effectiveness of the sheriff's office and, on the other hand, produced a laxity in tax collecting and a dilatoriness in tax paying that is probably not equaled in any other state.

The failure of the sheriff as tax collector was recognized and deplored before the Revolution; there has been no

[88] *Ibid.*, 4393. [89] *Ibid.*, 4408. [90] *Ibid.*, 3945.

improvement; the same charges that were made in 1776 were made in 1926. For a hundred and fifty years the taxpayers of the state have been paying toll to this inefficient system. For one hundred and fifty years politicians have been using the tax-collecting prerogative to strengthen their political positions and enhance their private fortunes. It is amazing that a population so shrewd and thrifty would tolerate the evil so long. Within the last five years several counties have separated the two offices, and many other counties are likely to fall in line. The volume of taxes has become too great to warrant the loose and wasteful practices that have prevailed so long. The more exacting demands of the next tax-settlement law will also make tax collecting a less attractive adjunct of the sheriff's office, and there are likely to be fewer candidates for sheriff. The man who is really interested in doing the work of a sheriff will be eager to give up the tax work, and the man who has been running for sheriff because of the opportunity to profit through tax collecting will drop out of the race. It is probable that within a few years tax collecting will be completely divorced from the sheriff's office, and that is to be desired.

Deputy Sheriffs:

It is necessary that the sheriff have several deputies, the number depending on the size and population of the county. There is usually one office deputy, the jailer who has been deputized, and several field deputies living in different parts of the country. The deputies are appointed by the sheriff and he is responsible for their actions. They assist the sheriff in serving process, in discovering violations of the law, and in making arrests; one or more deputies may assist in collecting taxes. The office deputy usually receives taxes, keeps the books, and serves process when called upon. Sometimes a sheriff turns over all court work to a deputy. In a few cases the office deputies are women.

What duties the sheriff performs and what he leaves to his deputies depends on the kind of work which he prefers and on the way in which he is paid.

Compensation:

There is no uniformity among the counties as to the compensation of the sheriff. A few years ago practically all of the sheriffs were compensated on a fee and commission basis. They retained the fees which they secured for serving process and for feeding prisoners, and they received a commission for collecting taxes. The general law fixed a commission of 5 per cent on the first $50,000 of taxes and 2½ per cent on the balance, but of course many counties operated under other schedules established by special acts.

The volume of taxes has increased so fast during the last few years that the counties have been obliged to keep reducing the commission or place the sheriff on salary. Some counties have granted a salary in lieu of all fees and commissions; others have substituted a salary for tax commissions but have allowed the sheriff to retain process fees. Some have put both sheriff and deputies on salary; others have given the sheriff a larger salary and have then required him to employ his own deputy or deputies. Practically all the counties are constantly changing the compensation. Forty-one counties had changes made by the 1925 legislature. Probably as many changes were made by the 1927 legislature, involving some of the same counties. This constant changing makes it impossible to make a tabulation, but a few of the salaries set up by the 1925 legislature may be indicated.

Alamance: $3,000, no fees; two deputies on salary also.

Cabarrus; $5,250 and fees; sheriff pays deputies himself.

Duplin: Not over $8,500, no fees; sheriff pays deputies.

Forsyth: $5,000, no fees; $1,500 extra for automobile and $1,200 for clerk.

Harnett: Sheriff, $2,100 and process fees, and $1,500 for clerk; tax collector, $2,400-$3,600, fixed by commissioners, and $2,400 extra for clerk hire.

Haywood: $4,000 and fees; sheriff pays deputies.

Mitchell: $3,300 and fees; sheriff pays deputies.

Moore: Sheriff, salary fixed by commissioners; tax collector, salary fixed by commissioners.

Nash: $3,600, no fees; not over $8,400 allowed for deputies.

Orange: $3,000, no fees.

Surry: $3,500, no fees; $1,500 for deputy.
Watauga: 3½ per cent on taxes, also process fees.
Wilson: 2¼ per cent on taxes, also process fees.

There is no justification for giving a sheriff 2½ or 3 per cent for collecting taxes. Taxes ought to be collected for 1 per cent. If the sheriff cannot collect them as cheaply as this, someone else can. Buncombe, Moore, Madison, Polk, Harnett, and possibly other counties have provided separate tax collectors, and in every case they have been placed on salary. In no case is the salary much in excess of 1 per cent of the taxes, except in Polk County, where the tax collector is also treasurer. If the sheriff collects taxes he ought to receive a definite salary or commission for that part of his work, and another salary as sheriff. This is so that counties may know what it is costing to get taxes collected.

If the sheriff is deprived of tax collecting he will generally have to be given a supplementary salary, even if he keeps the process fees. In many counties the latter will not support an officer. The experience to date is that it is more economical for the county to give the sheriff the fees and a moderate salary than to give him a larger salary and have him turn in his fees. Under the latter arrangement he is tempted to give the process work to his deputies, who are paid on a fee basis, and thus have no fees to report himself. In most counties a supplement of $1,000 to $1,500 to the process fees will provide the sheriff a reasonable salary. This is assuming that he has nothing to do with tax collecting.

Rural Policemen:

Within the last few years a number of counties have found it advisable to supplement the ordinary police agencies with a corps of rural policemen. Among the counties which have recently received authorization from the legislature to appoint rural policemen are the following: Anson, Bladen, Buncombe, Columbus, Cumberland, Currituck, Harnett, Hoke, Mecklenburg, Robeson, Scotland, and Transylvania. Such police officers are usually appointed by the commissioners and responsible to them, though they

may be appointed by the sheriff and under his direction. They are usually paid a monthly salary and some counties permit them to retain the fees which they collect.

Their duties in the several counties are not dissimilar to those specified in the act authorizing their appointment in Columbus County. A portion of this act is quoted below:

> It shall be the duty of said policemen, under the general control of the board of commissioners of the county, to patrol and police the county; to detect and prevent the violation of the criminal laws of any and every kind; to make arrests upon their own initiative as well as upon information or complaint; to report their acts and all known or suspected violations of the criminal laws to the sheriff or the board of commissioners of the county; to obtain warrants for arrests for and prosecute all persons who have violated any of the criminal laws.
>
> The said policemen shall frequent public gatherings of any and every kind where violations of the law are likely to occur, places where violators may be loafing or alcoholic liquors may be sold, bartered, or given away contrary to law, and shall use every means to detect and prevent breaches of the peace, public drunkenness, the use of obscene language, boisterous conduct, carrying concealed weapons, violation of the road laws, and the violation of any and every law which is detrimental to the peace, good order, and morals of said county.[91]

The demand for rural policemen grows out of the failure of the sheriff and his deputies to preserve the peace and render adequate protection to life and property. Deputy sheriffs ordinarily receive no compensation except the fees which they collect, and hence must have another occupation. Rural policemen can devote their entire time to police work, and naturally can render better service. Nevertheless, there is much dissatisfaction with them. They are ordinarily untrained, and quite often seek the position in order that they may "loaf with pay." Sometimes the jobs are created as rewards for party workers of limited ability. Finally, there have been instances where persons with an officious nature have gained a place on the rural police force so that they can exercise authority.

[91] *Public-Local Acts*, Extra Session of 1924, chap. 93.

Chapter IX

SYSTEM OF PUBLIC SCHOOLS

INTRODUCTION

The county is the strategic point in North Carolina's public school system, and the county board of education and the county superintendent are the media of communication between the local schools and the State Department of Public Instruction. In many states the township, or a group of townships, constitutes the supervisory district, but in North Carolina the county is the unit of administration. The county is the taxing unit for the constitutional school term, and there is a tendency to make it the taxing unit for all school purposes.

Educational standards are fixed by the state, but the county, after meeting minimum requirements, has a wide range of choice as to what standards it will adopt. There is less local option on the part of the individual schools than is characteristic of northern schools. The local school committees, instead of being elected by the patrons of the school, are appointed by and responsible to the county board of education. The county board thus enjoys, on the one hand, a large measure of control over the local districts and, on the other hand, a considerable degree of freedom from state control. In it and in its agent, the county superintendent, authority is focused from above and from below. This is another evidence of the importance of the county in North Carolina's scheme of government.

Historical Background:

It is not within the scope of this study to trace the development of public school education in North Carolina. That has been done in admirable fashion by Dr. Edgar W. Knight, and to those who are interested in North Carolina history his book is commended.[1] The writer is indebted to

[1] *Public School Education in North Carolina.*

Dr. Knight's illuminating book for the few historical statements which are here given.

The slow growth and scattered population of the North Carolina colony was not conducive to educational development, and, except for some missionary activity, little was accomplished or attempted. The well-to-do educated their children by sending them to England or by employing private tutors, but for a long time nothing was done for the children of the less prosperous. An agitation for public schools began about 1736 and continued throughout the remainder of the colonial period, but the most that was done was the granting of a slight subsidy to a few private schools. The immigration of the Scotch and Scotch-Irish after 1740 gave the first impetus to education,[2] for wherever they settled they set up schools. The Germans and the Quakers who came down from Pennsylvania were also believers in schools and established them in their respective communities.

From the Revolutionary period until the middle of the nineteenth century the academy was the prevailing type of school. It was a more democratic institution than the classical schools of the colonial period, though supported in the main by tuition charges.

A significant step in the interest of public education was taken with the establishment in 1825 of the "Literary Fund,"[3] but the growth of the fund was slow for several years. In 1837 the federal surplus was divided among the states, and North Carolina added nearly all of its portion of $1,433,757 to this fund. The income was then considered sufficient to help with the support of a system of common schools and in 1839 the first public school law was passed.[4] It provided for elections to be held in every county to ascertain the wishes of the people in regard to the establishment of public schools, and a favorable vote indicated a willingness to raise by local taxation one dollar for every two dollars to be appropriated out of the Literary Fund. The plan was endorsed in all except seven of the sixty-eight counties then existing. The public school system did not flourish, however, until after the appointment of

[2] *Ibid.*, p. 37. [3] *Ibid.*, pp. 65, 84-112. [4] *Ibid.*, p. 140.

Calvin H. Wiley as state superintendent in 1853. During the thirteen years of his incumbency the state experienced a great educational awakening and developed a state-wide school system that compared favorably with any in the Union.[5] So loyal had the people become to the schools that they were kept open throughout the period of the Civil War, but in the wreck which followed the war the Literary Fund was lost and the school system collapsed.

The constitution of 1868 provided[6] that the General Assembly in its first session should "provide by taxation and otherwise for a general and uniform system of public schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one years." It further provided that the counties should be divided into convenient districts, "in which one or more public schools shall be maintained at least four months in every year." Finally, it empowered the legislature to enact "that every child of sufficient mental and physical ability shall attend the public schools during the period between the ages of six and eighteen years, for a term of not less than sixteen months, unless educated by other means." Except that the compulsory school term has been extended to six months these sections of the constitution have remained unchanged.

The next legislature (1869) passed an act incorporating the mandates of the constitution. In many respects the law was identical with the law of 1839 and its subsequent revisions. An attempt was made to re-establish the *ante-bellum* system, but the people were too hopeless and impoverished to respond. There was also some apprehension that mixed schools might be demanded. It is true that the law of 1869 had called for separate schools, but the constitution was silent on that point. During the uncertain days of Reconstruction very little educational progress was made. Only in cities and towns, and particularly in those which were aided by the Peabody Fund, were any serious efforts made to maintain free public schools.[7]

After the amendment of the constitution in 1876, which

[5] *Ibid.*, p. 158-190. [6] *North Carolina Constitution*, art. IX, secs. 2, 3, 15.
[7] Knight, *op. cit.*, p. 283.

restored "home rule" to the state and inserted a clause requiring separate schools for the children of the two races, there was a revival of interest in public education. Successive legislatures passed progressive school measures, but the lack of willingness to support schools through local taxation made progress very slow. The Supreme Court ruled in 1870[8] that the support of schools was not a *necessary expense*, so that no local school tax could be imposed without the consent of the people of the district. Another decision[9] of the court in 1885 made it illegal for a county to levy a supplementary tax for schools without a vote of the people, even though the state-wide levy did not furnish money enough to keep the schools in operation four months. These adverse decisions had a retarding effect on the growth of local tax sentiment. Progress in public school development was very slow until after the Aycock revival at the beginning of the present century. His crusade and the progress which has followed is a story too familiar to need rehearsal.

COUNTY SCHOOL ORGANIZATION

County Board of Education:

Evolution. On the eve of the new century there appeared the beginnings of the educational system which has continued to the present time. The General Assembly of 1899 created and named the members of a board of school directors of three members for each county. On the second Monday in July, 1899, and biennially thereafter, the county board of directors was to elect a county superintendent of schools, who must be a practical school man. The county board of directors was also to appoint biennially in each of the townships "three intelligent men of good business qualifications, who are known to be in favor of public education," as township school trustees. The township boards were to divide their respective townships into convenient school districts and elect for each school three committeemen. No district should be created with fewer than sixty-five children of school age, unless geographical conditions or sparsity of population made it imperative to do so. The county board was to hold four regular meetings each year. Twice a year

[8] Lane *v.* Stanly, 65 N. C. 153. [9] Barksdale *v.* Commissioners, 93 N. C. 472.

it was to apportion the school fund of the county to the various townships, and the township trustees were to apportion and distribute the township quota so as to give each school the same length of term.[10]

In 1901 the school law was amended[11] to permit the county board of school directors, if it deemed best, to select three committeemen for each school, instead of electing township trustees. Furthermore, special school tax districts might be formed by the county board of education without regard to township lines. In time, the intermediate, or township, board entirely disappeared.

The act of 1899 named the members of the first county school boards, but it provided that their successors, who were to come into office in 1901, should be chosen by the county commissioners. The act in 1901, [12] however, named the new members and provided that their successors should be selected by the county commissioners in 1903. In that year, likewise, the legislature made appointments for another term of two years and removed the provision for subsequent selection by the county commissioners.[13] Thus the county boards of education have been chosen by the legislature without interruption from 1899 to the present time. Since 1917, however, the legislature has been required to elect the members from among nominations submitted by the county primaries or conventions.[14]

Membership. There is in each county a board of education consisting of three or five members.[15] The number of members may be increased from three to five or reduced from five to three by a public-local act. For instance, in the 1925 session of the legislature acts were passed increasing the membership in Moore and Stanly counties and other acts reducing the membership in Craven, Haywood, and Transylvania counties. A change in the number of members is quite often made so as to change the complexion of the board for some particular purpose.

Term of Office. The term of office is two years unless it is made longer in particular counties by special act. In Stanly,

[10] *Laws of 1899*, chap. 732.
[11] *Laws of 1901*, chap. 4.
[12] *Ibid.*
[13] *Laws of 1903*, chap. 435.
[14] *Laws of 1917*, chap. 74.
[15] *Laws of 1923*, chap. 136 (School Law), sec. 10.

Franklin, and Beaufort counties, for example, the term is six years with one or more members retiring every two years. All terms begin on the first Monday in April of the odd years.[16]

Manner of Selection. The law provides that candidates for membership on the county board of education shall be nominated by each political party, at the party primaries or conventions, in the same manner as other county officers are nominated. The names of the persons so nominated are certified by the chairman of the county board of elections, within ten days after their nomination, to the State Superintendent of Public Instruction, whose duty it is to transmit the names of all persons so nominated, together with the name of the political party nominating them, to the chairman of the committee on education in the next session of the General Assembly within ten days after it convenes. It is the duty of the General Assembly to elect or appoint one or more of the candidates so nominated as a member or members of the county board of education. If the legislature fails to make such appointments the places are considered vacant and the vacancies filled by the State Board of Education.[17]

This method of selecting the board of education has both merits and defects. Because of their indirect election, the candidates are not subjected to a political campaign, are not required to make campaign pledges, are not required to appeal to the voters on a partisan basis. If there is any contest it is within the party, and if there are any pledges they are made to the party leaders. It must be admitted, on the other hand, that to permit the politicians to make the nominations and then deny the people the opportunity to vote on the nominees is a most unusual arrangement. It is undemocratic, to say the least.

The election of the school board by the General Assembly results, as it was designed to do, in school boards of the same political complexion as the dominant party in the legislature. There are historical reasons which probably justified this arrangement. When the election of Republicans might lead to Negro rule, the people were justified in taking precautions. No doubt it has been an advantage in the development of a

[16] *Ibid.*, sec. 11. [17] *Ibid.*, sec. 12.

state-wide school system to have harmony between the state board and the local boards. Nevertheless, it is an arrangement which is contrary to the principles of democracy and one fraught with real dangers.

Under the present arrangement one party has a control, or a potential control, over the entire educational machinery of the state. It would be unfair to infer that the Democratic party dominates, or has ever tried to dominate, the school system. There is perhaps no evidence that a teacher or a superintendent was ever hired or discharged because of his political affiliations. The fact remains, however, that the Democratic party has in its hands a powerful instrument which it might use for partisan purposes if the temptation became too strong. No single party ought to be in a position to dictate the educational policy and select all the educational forces in a free state.

The county boards of education ought to be non-partisan, or at least bi-partisan. Perhaps there is no way to insure that they be non-partisan. It is possible that they have been less partisan because of the indirect method of selection than they would be with popular election. Nevertheless, there are strong arguments for the popular election of the county board of education. It is a policy-determining body, and such bodies should generally be subject to direct popular control. Whether or not the time has yet come for the popular election of the school boards, they at least ought to be composed of intelligent men and women selected without regard to their political affiliations. In some counties this is already the case, and where it is not the people of both parties ought to insist that the administration of the schools be kept entirely divorced from party politics.

Vacancies. All vacancies in the membership of the board of education by death, resignation, or otherwise, are filled by the remaining members until the next regular session of the General Assembly, and then for the residue of the unexpired term by that body. If the vacancy to be filled by the General Assembly occurs before the primary or convention held in the county, nominations are made and elections conducted as in selecting members for full terms. If a vacancy occurs after the convention or primary has been held and the

remaining members on the board fail to make a selection within thirty days, the vacancy may be filled by the State Board of Education.[18]

Eligibility. No person is eligible to membership on the county board of education who is not known to be a man (person) of intelligence, of good moral character, of good business qualifications, and known to be in favor of education. Neither is any person eligible while actually engaged in teaching in the public schools, or while serving on a district committee or board of trustees. Those who are elected or appointed to membership on a county board of education must qualify by taking an oath of office.[19]

Organization. At the first meeting of the new board in April the members of the board are required to organize by electing one of their number chairman for a period of one year or until his successor is elected and qualified. The superintendent of public instruction, or county superintendent as he is generally called, acts as *ex officio* secretary to the board. He keeps the minutes of the meetings of the board but has no vote. In case there is no county superintendent, one of the members may be elected as temporary secretary. The law provides that the board of education shall meet on the first Monday in January, April, July, and October. It may elect, and usually does elect, to hold regular monthly meetings, and to meet in special sessions as often as the school business of the county may require.[20]

Compensation. The board of education fixes its own compensation, provided no member shall receive more than five dollars per diem and five cents a mile to and from the place of meeting. No member shall receive any other compensation, but he shall be reimbursed for traveling expenses incurred while performing duties imposed upon him by authority of the board.[21]

Status and Powers. The law states that the board of education shall be a body corporate by the name and style of "The Board of Education of ———————— County." By that name it shall hold all school property belonging to the county, and it shall be capable of purchasing and holding real

[18] *Laws of 1923*, chap. 136, sec. 16.
[19] *Ibid.*, sec. 17.
[20] *Ibid.*, secs. 18, 22.
[21] *Ibid.*, sec. 20.

and personal property, of building and repairing schoolhouses, of selling and transferring the same for school purposes, and of prosecuting and defending suits for or against the corporation.[22]

The board has the power to issue subpoenas for the attendance of witnesses to testify concerning any matter which may lawfully come within the powers of the board, and which in its discretion requires investigation. It is the duty of the sheriffs, coroners, and constables to serve such subpoenas upon payment of their lawful fees. The board has the power to punish for contempt any disorderly conduct or disturbance tending to disrupt it in the transaction of official business.[23]

An appeal shall lie from all county school officers to the county board of education, and such appeals are regulated by rules adopted by the board. The superior courts of the state may review any action of the county board of education affecting one's character or right to teach.[24]

The county board of education is empowered to exercise general control and supervision over all matters pertaining to the public schools of the county, except that its jurisdiction does not extend to the schools of special charter districts which have their own boards of trustees. In a word, upon the county board of education the law has conferred and imposed all the powers and duties respecting public schools which are not expressly conferred and imposed upon some other officials.[25]

Subject to many statutory limitations, the more important powers and duties of the county board of education include the following: (*a*) Be responsible for the execution of the school law; (*b*) So district the county and locate the schools that elementary and high school instruction may be available to all the children of the county; (*c*) Make provision for the construction and furnishing of comfortable and adequate school buildings; (*d*) Determine the method of conducting the public schools of the county; (*e*) Fix the time for opening and closing the school term; (*f*) Determine the length of the school day; (*g*) See that the compulsory

[22] *Ibid.*, sec. 19.
[23] *Ibid.*, sec. 24.
[24] *Ibid.*, sec. 26.
[25] *Ibid.*, secs. 28-42.

school law is enforced; (*h*) Determine the number of teachers to be employed in each school; (*i*) Make appropriations from the county school fund for teacher training; (*j*) Elect a county superintendent of schools and such assistants as the needs of the county may require; (*k*) Elect three committeemen to serve in each local school district; (*l*) Prepare, with the assistance of the county superintendent, an annual budget; (*m*) Borrow money in anticipation of budget appropriations; (*n*) Consolidate schools or school districts when it is deemed advisable and certain conditions are met; (*o*) Provide for the transportation of pupils who, because of consolidation, live beyond walking distance from a school; (*p*) Make rules and regulations governing the conduct of teachers, principals, and supervisors, what shall be their duties and what reports they shall make.

County Superintendent of Public Instruction:

History. The office of county superintendent was created in 1881, but it did not become a responsible, whole-time office until 1903. During the first ten years after the office was created, most of the superintendents had other occupations, and their educational labors consisted mainly in holding examinations for teachers and conducting an occasional institute. The average salary of the ninety-six county superintendents in 1890 was only $175, and in some counties it was only $50 or $60.[26]

In 1895 the office was abolished and the work divided between the clerk of the county board of commissioners and a so-called county examiner.[27] Two years later the latter office was abolished and a county supervisor of schools appointed with duties practically the same as those previously prescribed for county superintendents.[28] In 1899 the legislature provided for the appointment of a county superintendent, who was required to be a practical teacher and to have had at the time of appointment at least two years' experience in teaching or in public school work. He was to be paid a per diem salary of not less than two dollars nor more than three dollars, and the number of days for

[26] Knight, *op. cit.*, p. 320.
[27] *Laws of 1895*, chap. 439.
[28] *Laws of 1897*, chap. 108.

which he drew pay was not to exceed 50 per cent more than the number of days in the average school term.[29] In 1901 the law was amended to permit the superintendent to be paid a salary equivalent to 4 per cent of the school disbursements.[30] In 1903 the law stated that the superintendent's salary should not be less than three dollars a day while engaged in the service of the public schools. The board might fix a salary not to exceed 4 per cent of the disbursements for schools, or in counties where the total school fund exceeded $15,000 the board might employ a superintendent for all of his time at such salary as the board might fix.[31] This is the present arrangement and salaries range from $1,500 to $5,000.

Election and Term of Office. The county superintendent is appointed by the county board of education as soon as convenient on or after its first meeting in April.[32] He is elected for a term of two years, but is eligible to succeed himself indefinitely. The average period of service in one county is about four or five years. Many superintendents have served for long periods, advancing from the poorer counties to wealthier and more populous ones. The position offers to young men who are qualified a worthy and attractive career.

Eligibility. A candidate for the position of county superintendent must be a person of good moral character and of liberal education. He must be qualified to discharge the duties of the office as required by law, due regard being given to experience in teaching and in supervision. He must hold at the time of his election or must secure before assuming the duties of the office, a superintendent's certificate under the rules and regulations of the State Board of Education.[33] The state department may withhold a certificate from a person who appears to lack the ability or personality to make a successful school executive. The county board is thus limited in its selection to a list of eligibles accredited by the state department. This is an excellent safeguard, provided it is courageously and impartially applied. No person in-

[29] *Laws of 1899*, chap. 732.
[30] *Laws of 1901*, chap. 4.
[31] *Laws of 1903*, chap. 435.
[32] *Laws of 1923*, chap. 136 (School Law), sec. 83.
[33] *Ibid.*, sec. 84.

fected with tuberculosis is eligible to the position. This, too, is a wise provision.

Duties of County Superintendent. The duties of the county superintendent are many and varied. He is the executive agent of the school board and the head of school administration in the county. He carries out the orders of the board and acts as its spokesman and representative. He is *ex officio* secretary to the county board of education and, acting in that capacity, it becomes his duty to record all proceedings of the board, issue all notices and orders, and record and carefully preserve all school statistics.[34] It is his further duty to make such reports to the state superintendent as are required by law, and supply such other statistics and reports as the state superintendent may demand.

The administrative duties of the county superintendent as laid down in the school law are too numerous and detailed to be catalogued here. A few of the more important ones will be listed without analysis or comment: (*a*) Consult with the various school committeemen and inform them of their duties; (*b*) Inspect or have inspected all school buildings and report their condition to the local committee and to the county board of education. This is to be done sufficiently early for them to be made comfortable and sanitary before the opening of school; (*c*) Distribute to the school committees and to the teachers of the county all blanks, registers, report cards, record books, bulletins, and other supplies and information furnished by the state department; (*d*) Issue second or third grade county certificates when it is impossible to secure a sufficient number of teachers with state certificates; (*e*) Keep a record of all teachers employed in the county, together with a statement of certificate held, length of service, salary, etc.; (*f*) Approve the selection of all teachers; (*g*) Approve the dismissal of a teacher; (*h*) Advise and coöperate with teachers, principals, and supervisors; (*i*) Visit each public school under his jurisdiction at least twice during the school session, and inspect buildings and grounds and general condition of the school. If physical conditions are unsatisfactory he should

[34] *Ibid.*, sec. 89.

so report to the local committee and to the county board; (*j*) Hold teachers' meetings in the interest of improved instruction methods; (*k*) Suspend teachers who prove incompetent or uncoöperative; (*l*) Keep complete record of finances and assist in the drafting of the annual budget; (*m*) Keep a record of all fines, forfeitures, and penalties paid to or due the school fund, and see that such moneys reach the treasurer and are credited to the school fund; (*n*) Approve and sign all vouchers for the disbursement of school funds; (*o*) Keep a record, with exact boundaries, of all local-tax, special charter, and special school taxing districts in the county. The amount of taxable property, the number of polls, and the amount of the special tax levy shall also be indicated; (*p*) Condemn land, under certain conditions and in a certain manner, for school sites;[35] (*q*) Attend meetings of state and district associations of superintendents; (*r*) Enforce, or assist in the enforcement of, the compulsory school law; (*s*) Report defective children to the proper authorities; (*t*) In counties without another such official, serve as superintendent of public welfare. The duties of this office are discussed in another chapter.

County Supervisor:

The county board of education has the authority, with the consent of the county commissioners, to employ an assistant county superintendent or to employ one or more supervisors to aid the county superintendent in supervising the instruction in the elementary and high schools of the county.[36] Several of the wealthier counties employ such an assistant, usually a woman, who visits, encourages, and instructs the teachers of the county. She assists the superintendent in holding teachers' conferences and in numberless ways helps the teachers, especially the rural teachers, to understand and apply the most approved methods of teaching. Through such a representative the county superintendent is enabled to keep in touch with every school and every teacher in the county.

The office has been criticized on the ground that it relieves the county superintendent of work which it is his

[35] *Laws of 1923*, chap. 136, sec. 61. [36] *Ibid.*, secs. 51, 104.

duty to do, and for which he has ample time. Some people are inquiring, if the county superintendent has a stenographer to do the clerical work and a supervisor to do the visitation work, what does he have left to do? Apparently there are two kinds of superintendents, those who always find an abundance of work to do, no matter how many assistants they have, and others who seek only to fulfill the minimum requirements of the office. A small county with only twenty or thirty schools may not seriously need a supervisor. A large county with fifty, sixty, or more schools does need such an officer. Many of the counties which need them most do not have them.

In the counties which have a large negro population and many negro schools, there is usually an assistant superintendent for the colored race. There is perhaps no more capable or more successful school administrator in the state than the colored woman who supervises the colored schools of Edgecombe County.

Types of School Districts:

There are five different kinds of school districts, though not all of the different types may be found in a particular county:[37] (*a*) The *non-local tax district* is a territorial unit of the county system under the control of the county board of education, and which levies no supplementary local tax and thus operates for only six months. Ordinarily it contains a single elementary school. It has a local school committee, consisting of three persons, appointed by the county board of education; (*b*) The *local tax district* is a territorial unit of the county system under the control of the county board of education, but having in addition to the general county funds a special local tax fund, voted by the people, for supplementing the general county fund. The extra money may be spent to provide a longer term, a better building, or better salaries for its teachers; (*c*) *Special school taxing district* is a territorial division of a county embracing more than one school district, in which special taxes for schools may be raised; (*d*) *Special high school district* is one embracing two or more school districts and

[37] *Ibid.*, secs. 3, 4.

created for the purpose of giving high school advantages to the children completing the elementary schools in the several districts which compose the special high school district; (*e*) *Special charter district* is a district chartered by the Grand Assembly, the control of which is placed in the hands of a board of trustees or school commissioners whose duties are defined by the General Assembly, or it may be a territorial unit whose boundary lines are coterminous with the boundary lines of an incorporated town or city, but without a special charter, the city charter having authorized the city to maintain a system of schools, and the government of the schools having been delegated to a special board. The schools of a special charter district are not under the control of the county board of education nor under the administration of the county superintendent. Of course the district receives its share of the county-wide school levy.

School Committees:

In each local school district which is under the control of the county board of education there is also a local committee charged with certain duties and responsibilities. In those districts which levy a special tax the duties of the committee are slightly greater than in the others; so it may be better to describe each type of committee separately.

In Non-Local Tax Districts.[38] In each non-local tax district there is a school committee consisting of three persons appointed by the county board of education. The term of office is three years, and one term expires each year. The election occurs at the first meeting in April. All vacancies are filled by the county board of education. The law requires that a committeeman "shall be a person of intelligence, of good moral character, and of good business qualifications, and known to be in favor of public education." The county board may remove a committeeman for incompetence or failure to perform his duties, though not without a thorough investigation. No committeeman is eligible to teach.

The school committee has the authority to employ teachers only on the recommendation of the county super-

[38] *Laws of 1923*, chap. 136, secs. 123-143.

intendent. The committee may suspend or dismiss a teacher for cause, but not until charges have been filed in writing with the county superintendent, the teacher has been granted a hearing, and the county superintendent assents to the dismissal. Even then the teacher has the right to appeal to the county board of education. The school committee is entrusted with the care and custody of the school property of the district, provided their powers shall not be in conflict with the rules and regulations governing school property adopted by the county board of education. The local committee may purchase supplies and make repairs on the order of the county board. Every order on the county treasurer before being a valid voucher must be signed by at least two members of the school committee, and then by the county superintendent. It is the duty of the committeemen to see that the schools have good water supply and that the school premises are kept in an orderly and sanitary condition.

In Local Tax Districts.[39] The committeemen for the local tax districts are selected in the same manner and for the same term as in the non-local tax districts, but the number may be either three or five. The terms overlap so that a majority of the board does not retire in any one year, except as a result of death, resignation, or removal for cause.

The powers and duties of the committee are similar to those mentioned above, and in addition it is responsible for the expenditure of the money derived from local taxes. It is the duty of the committee to advise with the county board of education as to the rate of local taxes to be levied in the district, and upon a petition signed by a majority of the school committee of any local tax district and approved by the county board of education, the county commissioners shall increase or reduce the tax levy in accordance with the wishes of the petitioners, provided the rate is not in violation of the maximum or minimum voted by the people. With the approval of the county board of education the governing boards of two or more local tax districts may jointly employ a superintendent who shall relieve the county superintendent of certain administrative duties in such districts. Upon the consolidation of two or more local tax districts, the county

[39] *Ibid.*, secs. 144-157.

may provide transportation for six months, the cost of transportation for the remainder of the term being paid out of the local tax funds. Local tax districts may secure loans from the county board of education for the erection of schoolhouses, and the county board of education may deduct a sufficient amount from the local taxes or from the districts' apportionments from the county fund to meet the payments as they come due.

Types of Schools:

The different types of public schools are classified by the school law as follows:[40] (*a*) *A city school system* is a system maintained for 180 days and employing not less than thirty teachers and one whole-time superintendent. It shall contain a school system of eleven years, including a standard four-year high school employing not less than five teachers; (*b*) *A union school* is a system maintained for at least 160 days and embracing an elementary school of seven grades, and a high school department containing not less than twenty pupils in average daily attendance; (*c*) *An elementary school* is one in which are taught all or a part of the seven elementary grades, but without sufficient high school pupils or length of term to become a union school.

A standard high school is defined[41] as a high school that meets the following minimum requirements: A school term of not less than 160 days, four years or grades of work beyond the seventh elementary grade, three teachers holding required certificates, not less than forty-five pupils in average daily attendance, a program of studies approved by the State Superintendent of Public Instruction, and such equipment as may be deemed necessary by the State Superintendent of Public Instruction to make the instruction beneficial to pupils.

A standard elementary school[42] is an elementary school that meets the following minimum requirements: a seven-year course of study, a term of eight months, at least seven teachers holding professional certificates, at least 205 pupils

[40] *Ibid.*, sec. 4. [41] *Ibid.*, sec. 8.
[42] *Biennial Report of Superintendent of Public Instruction, 1922-24*, p. 27.

in average daily attendance, a satisfactory building with standard equipment, and an adequate system of records.

A vocational high school is a high school which gives instruction in one or more of the three fields of vocational education, namely, agriculture, home economics, trades and industries. These are sometimes known as Smith-Hughes schools because they are financed in part by the federal government under the provisions of the Smith-Hughes Act. North Carolina receives annually about $196,000 from the federal government under this act and the more recent Industrial Rehabilitation Act.[43]

PUBLIC SCHOOL FINANCE

Constitutional Provisions:

All of the provisions in our state constitution relative to education have remained unchanged since 1868 except two. In 1875 a provision was added requiring that the children of the white race and the children of the colored race be taught in separate public schools, and in 1918 the school term was increased from four to six months. A third change relative to taxation has also great educational significance. Prior to 1917 the constitution required a poll tax equivalent to the tax on three hundred dollars' worth of property, but not exceeding two dollars. Thus the state and county tax, except for special purposes, was limited to 66⅔ cents on a hundred dollars' worth of property. In 1927 this equation was removed.

The most important provisions of the present constitution relative to education and taxation are the following:

Article I, section 27: The people have the right to the privilege of education, and it is the duty of the State to guard and maintain that right.

Article IX, section 1: Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Article IX, section 2: The General Assembly . . . shall provide by taxation and otherwise for a general and uniform system of public schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-

[43] *Ibid.*, p. 33.

one years. And the children of the white race and the children of the colored race shall be taught in separate public schools; but there shall be no discrimination in favor of, or to the prejudice of, either race.

Article IX, section 3: Each county of the State shall be divided into a convenient number of districts, in which one or more public schools shall be maintained at least six months in every year; and if the commissioners of any county shall fail to comply with the aforesaid requirements of this section, they shall be liable to indictment.

Article IX, section 15: The General Assembly is hereby empowered to enact that every child, of sufficient mental and physical ability, shall attend the public schools during the period between the ages of six and eighteen years, for a term of not less than sixteen months, unless educated by other means.

Article V, section 1: The General Assembly may levy a capitation tax on every male inhabitant of the State over twenty-one and under fifty years of age, which said tax shall not exceed two dollars, and cities and towns may levy a capitation tax which shall not exceed one dollar. No other capitation tax shall be levied.

Article V, section 2: The proceeds of the State and county capitation tax shall be applied to the purposes of education and the support of the poor, but in no one year shall more than twenty-five per cent thereof be appropriated to the latter use.

Article V, section 6: The total of the State and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property except when the county tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by Article IX, section 3, of the Constitution: Provided, further, the State tax shall not exceed five cents on the one hundred dollars value of property.

Article VII, section 7: No county, city, town or other municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein.

Judicial Interpretation:

The constitution, therefore, makes it the duty of the county commissioners to provide a minimum school term

and makes them indictable if they do not; yet until 1917 another clause of the constitution forbade them to exceed a certain tax limitation. During most of this period the court in its interpretations consistently safeguarded the tax guarantees at the expense of education.[44]

Reference has already been made to the important decisions of 1870 and 1885. In the first (Lane *v.* Stanly) the court ruled that townships and special school districts can levy a school tax only by vote of the people. In the second (Barksdale *v.* Commissioners) the court held that a school tax was not a special tax for a special purpose in the meaning of Article V, section 6, of the constitution.

The opinion of the court in the Barksdale case was not unanimous. Judge Merrimon put in the records a dissenting opinion to the effect (*a*) that the limitation of taxation could not properly be applied until after provision had been made for at least a four months' school term; and (*b*) that the General Assembly has ample power to declare public schools a necessary county expense, not only for four (or six) months, but also for more than four (or six) months. After the schools had been starved for twenty years more, the court reversed its opinion in 1907[45] and accepted substantially Judge Merrimon's position. It did not go quite so far as he did, however. It held that "at least four months" did not mean more than four months, and thus any attempt by a county to levy a special tax for any longer term than the constitution required would be illegal without the approval of the people.

In 1918 the constitution was amended and the minimum school term made six months instead of four. There have been several other important opinions of the court as to the meaning of the constitution. One provision of the constitution[46] not quoted above is that all fines, penalties, forfeitures, and other specified receipts of the county shall go to the school fund. In certain counties some of these revenues were being diverted to other than school purposes until the

[44] Coon, "School Support and Our North Carolina Courts," *North Carolina Historical Review*, July, 1926.

[45] Collie *v.* Commissioners, 145 N. C. 170.

[46] *North Carolina Constitution*, art. IX, sec. 5.

court ruled emphatically in 1905 that these sources belonged entirely to the school fund.[47]

In 1917 high schools were recognized by the court as a vital and necessary part of the public school system.[48] In 1919 the court declared that school buildings must be included as a part of the necessary expense of maintaining the six-months minimum school term and could be provided by the commissioners of any county by taxation without a vote of the people.[49] In 1921 the court upheld the right of the board of education and the board of commissioners of any county to contract a twenty-year debt for school buildings and to pledge its payment with interest by means of the levy of a county tax, all without a vote of the people.[50]

The court has become more and more liberal in its construction of the constitution to the great advantage of education. There seem to be only two serious obstacles remaining. The court has declared that the schools for six months are a necessary expense but that school support beyond the minimum term is an unnecessary expense. It has also declared that schools and school buildings are not a necessary expense except for a county, which is an administrative agency for the state. Thus a township or a municipality cannot issue bonds or levy a tax for a new school building without a favorable vote of the people. Nor can any unit levy a tax for a school term in excess of six months without the approval of the people.

School Revenues:

During the early part of the nineteenth century the schools depended for support mainly on tuition charges. Just prior to the Civil War the income from permanent endowments was the main reliance. The ideal of local taxation for public schools was accepted only after long and bitter resistance. It has held sway for a generation, and now a new ideal is proposed, namely, a uniform school tax throughout the state. This latest ideal is not yet fully

[47] School Directors *v.* City of Asheville, 137 N. C. 503.
[48] Board of Education *v.* Commissioners, 174 N. C. 469.
[49] Board of Education *v.* Commissioners, 178 N. C. 305.
[50] B. R. Lacy, Treasurer *v.* Fidelity Bank of Durham, 183 N. C. 373, and Tate *v.* Board of Education, 192 N. C. 516.

realized. The county remains the unit of taxation for the support of the constitutional six-months term, with the burden equalized to some extent by means of the State Equalizing Fund. To meet the cost of an extended term or of any other unusual expenditure the local district is, with a few exceptions, the unit of taxation.

The General Property Tax. The major portion of the county school fund is derived from the general property tax. Because of the variations in wealth among the several counties the levies necessary to maintain a six-months term are very unequal. Durham County, for instance, has five times as much wealth per pupil enrolled in school as Macon County. Last year (1926) the tax rate levied to support the constitutional school term was twenty-eight cents in Forsyth County, forty cents in Guilford, $1.16 in Clay, and $1.25 in Pender. This was after a million and a half dollars had been distributed by the state to help equalize the burden. Now that the equalizing fund has been doubled, the discrepancy will not be so great. Indeed it is expected that the burden can be equalized in ninety counties and that no county will have to levy more than forty cents to meet the expenses of the six-months term, that is, exclusive of capital outlays and debt service.

For most taxpayers the county-wide school tax does not represent the total school tax, for there are the special district taxes. The taxpayers of the district must pay for any additional term beyond the six months, any increase in teachers' salaries beyond the state salary schedule, and part or all of the cost of an improved school building. Quite frequently the district school tax is at least half as great as the county school tax. In 1924-25 the county school tax on property in the one hundred counties amounted to $14,846,857.08, and the special district taxes for schools amounted to $4,163,053.48. The first amount was borne by all the property of the several counties and represented an average rate of 54.75 cents. The second amount was borne by only such property as was embraced in the special districts.

The Poll Tax. The constitution provides that three-fourths of the poll shall go for the support of education.

Thus a dollar and a half from each poll goes into the county school fund. This source yields in the entire state about $600,000 a year.

The Dog Tax. There is a dog tax of one dollar on each male dog and two dollars on each female dog. The receipts from this source ordinarily go into the county school fund, but they may be used to aid the weaker union school districts of the county. The receipts from the dog tax are kept in a separate fund, and from this fund damages are paid to those who have had sheep or poultry ravaged by dogs. Strangely, the city counties of Guilford, Forsyth, and Wake collect the most from dog taxes.

Fines, Forfeitures, and Penalties. The constitution[51] prescribes that "the net proceeds from the sale of estrays; also the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal or military laws of the State; and all moneys which shall be paid by persons as an equivalent for exemption from military duty, shall belong to and remain in the several counties, and shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of this State: Provided, that the amount collected in each county shall be annually reported to the Superintendent of Public Instruction." The law[52] makes it the duty of the clerks of the several courts and of the several justices of the peace to enter in a book, to be supplied by the county, an itemized and detailed statement of the respective amounts received by them in the way of fines, penalties, amercements and forfeitures, and to keep said books at all times open to the inspection of the public. The law requires that moneys received from these sources shall be accounted for and paid to the county treasurer within sixty days after receiving them, and any officer failing to do so is guilty of a misdemeanor. Notwithstanding the law, there appears to be widespread abuse in accounting for receipts of this sort. Mayors and justices of the peace are often dilatory and irregular in making reports and have

[51] *North Carolina Constitution*, art. IX, sec. 5.
[52] *Consolidated Statutes*, 1323, 1324.

sometimes failed to report all of the fines which have come into their hands.

In 1924 the fines and penalties paid into the school funds of all the counties amounted to only $303,992.21. For the other school revenues of that year see page 103.

Equalizing Fund:[53]

Since the tax resources of the several counties bear no relation to their respective school populations, the tax burden for schools is much greater in some counties than in others. The inequality is partially removed through the so-called Equalizing Fund.

As early as 1899 the General Assembly passed an act[54] appropriating $100,000 annually out of the state treasury for the benefit of the public schools. It was to be distributed in the counties on the basis of the school census. In 1909 the amount of the annual appropriation was increased to $125,000, and in 1913 to $250,000. In a measure this appropriation served as an equalizing fund. It came from the general state property tax (levied uniformly in all counties) and was distributed, not according to property valuations, but according to school population. The per capita distributions were continued until 1919.

The first direct effort in the interest of equalization, however, was an appropriation of $100,000 by the General Assembly of 1901.[55] This was in addition to the $100,000 mentioned in the preceding paragraph and for a different purpose. Teachers' salaries and the number of teachers permitted by enrollment were made the basis of apportionment. In order to share in this fund, a county could not set aside more than a given percentage of its school fund for building schoolhouses. Nor could it share in the fund unless it had levied the maximum rate of eighteen cents on one hundred dollars of valuation for schools.

The size of the Equalizing Fund remained at $100,000 until 1913, but the basis of apportionment was changed from time to time. The General Assembly of 1913 increased the per capita fund to $250,000, and at the same time

[53] For history of the Equalizing Fund, see *School Facts*, vol. I, no. 15.
[54] *Laws of 1899*, chap. 637. [55] *Laws of 1901*, chap. 543.

provided that five cents of the state property tax should be set aside as the Equalizing Fund. This source yielded about $375,000 the first year. The purpose of the enlarged Equalizing Fund, according to the act creating it, was to provide a *six months'* school term in every district in the state or as nearly a six months' term as the fund would provide. No county could share in the fund until it had itself provided for a four months' school term or had levied a special fifteen-cent tax therefor, in addition to the general school levy of twenty cents.

In 1917 the State Board of Education was directed to apportion to each county whose funds were insufficient to provide a four months' school term, after having levied the maximum required tax, a sufficient sum to bring its term up to four months. The board was then to apportion the remainder of the fund among all the counties of the state, and thereby extend the term by an equal number of days in all counties. Under this arrangement all counties enjoyed the same school term (though not quite six months) and no county paid more than forty-three or less than twenty-eight cents school tax, state and county.

In 1918 the people of the state voted favorably on a constitutional amendment extending the minimum constitutional school term from four months to six months. Thus the legislature of 1919 was faced with the responsibility of financing the longer term. It therefore levied a state-wide property tax of thirty-two cents, the receipts from which were to be known as the "State Public School Fund." This was to be distributed to the counties to help pay teachers' salaries and for no other purpose. The county must levy a school tax sufficient to maintain the schools for six months, provided that no county should be compelled to levy more than thirty-five cents on each one hundred dollars of valuation. The same legislature passed the act providing for a revaluation of property, the new standard being 100 per cent. The grand total of all property assessed for taxation was increased in 1920 to three times what it was in 1919. Consequently the special session of the legislature in 1920 substituted[56] a thirteen-cent tax for the

[56] *Laws of 1920*, Extra Session, chap. 91.

thirty-two-cent tax levied in 1919 for the state public school fund.

With the adoption of a state income tax in 1920, state revenues were increased sufficiently to permit the discontinuance of a property tax for state purposes. Again the plan of school support had to be revised. Thus the General Assembly of 1921 appropriated[57] from the general fund of the state treasury the sum of $1,400,000 to be known as the State Public School Fund. From this fund special appropriations of $642,750 were made and the balance ($757,250) set up as an Equalizing Fund. Each county which was unable to provide a six months' school term by levying as much as thirty cents on the hundred dollars of valuation was to receive the necessary supplement from the Equalizing Fund.

Two conditions arose almost immediately to nullify the adequacy of this arrangement. A graduated salary schedule for teachers was adopted, which encouraged the teachers to improve their certificates with a resulting increase in salary costs. The second disturbing factor was a reduction in valuations in sixty-seven of the one hundred counties, ranging all the way from 10 per cent to 50 per cent. With such variable assessments it was evident that the apportionment of the Equalizing Fund must rest on some other basis than the fact that a county had levied a thirty-cent tax. The state superintendent, acting on the advice of the attorney general, therefore, notified all boards of county commissioners that in order for any county to participate in the Equalizing Fund it must levy a tax equivalent to a thirty-cent rate levied on the 1920 valuation. The next legislature (1921) limited participation to those counties which met the superintendent's requirement or levied thirty-nine cents on current valuations. The Equalizing Fund was increased by $75,000 and special appropriations from the State Public School Fund reduced by that amount. It was distributed (*a*) to supplement the funds in those counties which after levying the maximum prescribed rates were still unable to provide a six months' school term, (*b*) to pay the salaries of county superintendents for six months,

[57] *Laws of 1921*, chap. 146.

and (*c*) to pay salaries of superintendents, supervisors, and principals three months. The Equalizing Fund was raised and apportioned under the provisions of this act for the years 1921-22 and 1922-23. Sixty-three counties participated.

The General Assembly of 1923 increased the fund to $1,250,000 and provided that it should be apportioned in such a way as to encourage the counties receiving aid to improve their schools by securing efficient organization, administration and supervision, and well-trained teachers.

In 1925 the legislature increased the Equalizing Fund to $1,500,000 with the provision that no county should receive any increase until it had levied a tax of at least forty-four cents on the hundred dollars' valuation for teachers', principals' and superintendents' salaries. Despite the steady increase in the Equalizing Fund it did not keep pace with mounting school costs, and the school burden was less equalized in 1926 than it was ten years earlier.

The recent session of the legislature (1927) therefore took the most advanced step yet taken in the interest of an equalized school burden. The Equalizing Fund was increased to $3,250,000. The fund is still too small to equalize the burden in all the counties, but it is possible for ninety counties to share in it, and in these counties the burden can be virtually equalized. It is estimated that none of these counties will have to levy a school tax for current expenses in excess of forty cents for the six months' term unless its valuation is lower than the estimate of the State Board of Equalization. The ten wealthiest counties will continue to support their own schools. Some of them will not have to levy as much as forty cents, that is for the maintenance of a six months' term. Of course, this is only a temporary arrangement, for within a very few years the eight months' school term will be adopted, and then there will have to be further adjustment.

To be strictly an Equalizing Fund, ninety-nine counties would have to participate, each receiving enough so that it could reduce its tax rate to the level of that of the most favored county. This would require a large fund. It would also be necessary that the fund be raised in such a manner

that all counties would contribute according to their ability. A study was made by Dr. Fred W. Morrison[58] in 1925, in which he calculated that the present minimum state program, if it were to be borne equitably by all counties, should be supported by a uniform county tax of seventeen cents, and an Equalizing Fund of $4,499,235.42 derived to the amount of $1,250,000 from the income tax and the balance from an eleven-cent state property tax. For an eight months' minimum term he proposed a county tax of twenty-six cents, and an Equalizing Fund of $7,103,837.44 derived in part from an eighteen-cent state property tax and to the extent of $1,868,724.55 from an improved income tax.

Of course any Equalizing Fund presumes uniform property valuations in the several counties, a condition which does not always exist. For his computations Dr. Morrison averaged the 1920 and the 1923 valuations in the hope that this average might approximate the truth. This year (1927) is revaluation year, and it is hoped that existing inequalities will be corrected, but the distribution of the Equalizing Fund does not have to be based on the valuations fixed by the assessors. The State Board of Equalization reserves the right to fix its own valuations and it employs its own appraisers to check up on the work of the regular assessors. The larger the fund to be distributed the greater will be the temptation for the counties to undervalue their property.

The School Budget:

The constitution requires a six months' school term and it is the duty of the county board of education of each county to make a fair estimate in accordance with law of the amount necessary to provide a six months' school term, and it is the duty of the county commissioners to raise the money. If the members of either board fail in the performance of their respective duties, they become guilty of a misdemeanor and upon conviction may be fined or imprisoned.[59]

The May Budget. The fiscal year begins the first of July,

[58] *The North Carolina Equalizing Fund.*
[59] *Laws of 1923*, chap. 136 (School Law), sec. 172.

and it is the duty[60] of the county board of education to fix a date during the month of May when the school budget for all the schools of the county for the next ensuing year shall be prepared. The trustees of the special charter districts are to be notified to prepare their budgets for the six months' school term and present them at the same time. The chairman of the board of county commissioners must also be notified at least twenty days before the date of meeting, and the law requires that the board of county commissioners or its representative shall be present and sit with the county board of education when the May budget is prepared.

To conform with the requirements of the new county fiscal control act the form of school budget has been improved. The new school budget law provides that the May budget prepared by the county board of education shall provide three separate school funds: (*a*) a current expense fund, (*b*) a capital outlay fund, and (*c*) a debt service fund. The current expense fund is subdivided into the following accounts: (1) expenses of general control; (2) instructional service; (3) operation of school plant; (4) maintenance of plant; (5) fixed charges, such as rent and insurance; and (6) auxiliary agencies, which would include replacement of and repair of library books, transportation of pupils, and other necessary auxiliary activities. The content of the other two funds is suggested by their titles.

Powers of County Commissioners over Budget. A copy of the May budget must be presented to the board of county commissioners on or before the first of June of each year. If this body approves the total amount of the budget, it must levy sufficient rates, after deducting the amount to be received from the state, to produce the amount asked for in the budget, and if the tax rate fails to produce, clear of all commissions, fees, and cost of collections, the amount approved in the budget, it is the duty of the commissioners to supply the deficit out of the general county fund or by borrowing in accordance with law.[61]

In order to satisfy themselves as to the reasonableness of the budget, or any item in the same, the commissioners may require the county board of education to make various

[60] *Ibid.*, secs. 174, 175.

[61] *Ibid.*, secs. 182, 183.

comparisons between the current year's budget and the one being proposed for the ensuing year. They may require the board of education to show that existing debts were incurred in strict accordance with the law, and the county commissioners are not liable for any debt, other than loans from the state, incurred by the county board of education in excess of the amount set forth in the May budget, unless the making of the debt was approved by them. The commissioners, before approving the May budget, may require the county board of education to publish the same in some leading newspaper published or circulated in the county and, when so published, to set forth the cost, district by district, and the amount of the increase for each district over the previous year, and the total amount of the increase.

The procedure in cases of disagreement between the two boards or in cases when the county commissioners refuse to levy the necessary school taxes is set forth in the law as follows:

> In the event of a disagreement between the county board of education and the board of county commissioners as to the amount of salary fund or the fund necessary to pay interest and installments on bonds, notes, and loans, the county board of education and the board of county commissioners shall sit in joint session and each board shall have one vote on the question of the adoption of these amounts in the budget. A majority of the members of each board shall cast the vote for each board. In the event of a tie, the Clerk of the Superior Court shall act as arbitrator upon the issues arising between said two boards, and shall render his decision thereon within ten days. But either the county board of education or the board of county commissioners shall have the right to appeal to the Superior Court within thirty days from the date of the decision of the Clerk of the Superior Court, and it shall be the duty of the judge hearing the case on appeal to find the facts as to the amount of the salary fund and the fund necessary to pay interest and installment on bonds, notes, and loans, which findings shall be conclusive; and he shall give judgment requiring the county commissioners to levy the tax which will provide the amount of the salary fund which he finds necessary to maintain the schools for six months in every school district in the county and the amount necessary to pay interest and installment on bonds, notes, and loans. Any board of county commissioners

failing to obey such order and to levy the tax ordered by the court shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court.

In case of an appeal to the Superior Court, all papers and records relating to the case shall be considered a part of the record for consideration by the court.

The county commissioners shall have the right to have the issue tried by a jury.[62]

The November Budget. On or before the fifteenth day of November of each year the county board of education and the board of trustees of all special charter school districts are required[63] to prepare a budget, on blanks furnished by the State Superintendent of Public Instruction, setting forth the names of the teachers actually employed in each district in the county, the grade of certificate held, the salary paid, and all other information asked for by the state department. The November budget is checked by the state superintendent to ascertain whether the teachers are properly certificated, whether the number of teachers is excessive, and whether the authorized salary schedule is observed. The county shall settle with the special charter districts for teachers' salaries in accordance with the checked budgets, and the State Equalizing Fund shall be finally apportioned in accordance with such checked budgets.

Contracting Indebtedness:

The constitution denies a county, city, town, or other municipal corporation the authority to contract any debt for other than necessary expenses unless the action is approved by a majority of the qualified voters. The court has held that it is a necessary expense of the county to maintain the schools for the period specified in the constitution. The building of elementary schools and high schools of adequate size and comfort is necessary to the maintenance of a six months' school. Therefore a county has the right to issue bonds to build schoolhouses without a vote of the people. A city, town, or school district does not have that right.

Whenever the county board of education shall so petition, the board of county commissioners of any county must

[62] *Laws of 1923*, chap. 136, secs. 187, 188.

[63] *Ibid.*, sec. 181.

order a special election to be held in any taxing unit, for the purpose of voting upon the question of issuing bonds and levying a sufficient tax for the payment thereof, for the purpose of acquiring, erecting, enlarging, altering, and equipping school buildings and purchasing sites, or for any one or more of these purposes. If a majority of the qualified voters of the county or district vote in favor of the issuance of the bonds and tax levy, then the board of county commissioners is empowered to issue the bonds in the name of the county, but unless the election is held in the entire county they are usually made payable exclusively out of taxes to be levied in the district. The bonds are sold by the board of county commissioners and not by the board of education. The proceeds derived from the sale of the bonds are turned over to the county treasurer, placed in a separate fund, and paid out for the purpose for which the bonds were issued only upon order of the county board of education.[64]

In special charter districts bonds may be issued by the board of trustees. Cities and towns may issue bonds for school purposes in the manner described above, or under provisions of the Municipal Finance Act.[65] Under ordinary conditions the total indebtedness of a school district must not exceed 5 per cent of the taxable wealth of the district.[66]

It has not been uncommon for tax collections to be so delayed that the school fund is denied the use of its money at the time it most needs it. Neither has it been uncommon for the year to terminate with large balances still due. In some counties school teachers have been required to wait months before they could get their salary vouchers cashed. In one county the only way negro teachers could get their money was by having the vouchers discounted by speculators, who charged extortionate rates.[67] This was all the result of dilatoriness in collecting taxes. The new school budget law makes it the duty of the board of education to file monthly with the county commissioners a written statement showing

[64] *Ibid.*, secs. 257-269.
[65] *Ibid.*, sec. 265; see also *Public Laws of 1927*, chap. 81.
[66] *Laws of 1923*, chap. 136 (School Law), sec. 264; see also *Public Laws of 1927*, chap. 81.
[67] County Government Studies, Department of Rural Social-Economics, University of North Carolina.

their financial condition and the estimated expenditures for the current month. And it is the duty of the commissioners to provide the money to meet these expenditures.[68]

Even under the old law it was illegal to exceed the approved budget, but it has been a common practice to do so. In one county the board of education had accumulated more than $100,000 deficit before the county commissioners were aware of it.[69] In another county the commissioners were levying a school tax of forty-five cents, when to meet the budget a sixty-eight cent levy was necessary.[70] The school law, like most other laws, has been violated too often.

The law has permitted the county commissioners to fund school debts which are in excess of $10,000,[71] and there are few counties whose bonded indebtedness does not include some funding of school deficits.

Loans from State Literary Fund. Mention has already been made of the Literary Fund, of the important part which it played in developing the *ante-bellum* school system, and how the fund was lost with the collapse of the Confederacy. In the constitution of 1868, amended in 1876, provision was made for the restoration of the fund, or at least that certain revenues be set aside to build up a state public school fund. The constitutional provision is as follows:

> The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; also all moneys, stocks, bonds, and other property now belonging to any state fund for purposes of education; also the net proceeds of all sales of the swamp lands belonging to the State, and all other grants, gifts or devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State, or by the terms of the grant, gift, or devise, shall be paid into the state treasury; and, together with so much of the ordinary revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining in this

[68] *Public Laws of 1927*, chap. 81, sec. 194.
[69] County Government Studies, Department of Rural Social-Economics, University of North Carolina.
[70] *Ibid.*
[71] *Laws of 1923*, chap. 136 (School Law), sec. 266.

State a system of free public schools, and for no other uses or purposes whatsoever.[72]

The fund grew very slowly. For the first twenty years the entries from public lands averaged only about $5,000 a year, and were gradually becoming less; the income from the sale of swamp lands was not large. The proceeds were invested in state bonds, and the income allowed to accumulate until there was enough money to justify a distribution. Several distributions were made, but the amounts were always so small that they were hardly felt. In 1903 the fund amounted to about $200,000, and Superintendent J. Y. Joyner recommended to the legislature that it be converted into a permanent loan fund to be used exclusively as a means of building and improving public schoolhouses, under rules and regulations to be adopted by the State Board of Education. This wise recommendation was followed, and the fund has proved to be one of perennial benefit to the counties and school districts of the state. Hundreds of buildings have been built or remodeled at a minimum cost through the use of these loans.

Briefly, the loans are made on the following terms: The State Board of Education loans only to the county boards of education, and the county boards, in turn, may loan to the local districts for specific pieces of construction. The interest rate is 4 per cent, and the principal is repaid in ten annual installments, the first installment being due the year following that in which the loan is received.[73]

The State Board of Education may, and does, annually set aside and use out of the funds accruing to the interest of the State Loan Fund a sum not exceeding twelve thousand dollars, to be used for providing plans for modern school buildings to be furnished free of charge to districts, for providing proper inspection of school buildings and the use of state funds, and for such other purposes as it may determine, to secure the erection of a better type of school building and the better administration of the loan fund. This architectural and inspection service has been of in-

[72] *North Carolina Constitution*, art. IX, sec. 4.
[73] *Laws of 1923*, chap. 136 (School Law), secs. 273-277.

estimable value to the local building committees and has without doubt saved the taxpayers hundreds of thousands of dollars. Even with this protection there have been instances of faulty construction by ignorant or designing contractors.[74]

Loans from Special Building Fund.[75] The Special Building Fund is the name applied to all funds derived from the sale of state bonds authorized by the General Assembly to be sold and loaned by the State Board of Education to county boards of education for the special purpose of aiding in the erection and equipment of schoolhouses, dormitories, or teacherages, or to aid in the purchase of suitable sites. Loans made to county boards of education from this fund are payable in twenty equal installments, and bear interest payable annually in advance at the same rate that the state has to pay on the bonds. The first installment falls due within a year after the loan is made. The county board of education must make provision in its budget for interest and installments on these loans, and the county commissioners must levy a sufficient tax to meet this item. It should be added that every loan made from this fund must first have been endorsed by the county commissioners and they must have agreed to levy a sufficient tax to liquidate it. Furthermore, before any loan can be made to a county, the board of education and the county commissioners must all make affidavit that the loan is necessary to provide a six months' school. This is significant, for if it were not to meet a necessary expense, such a loan would be a violation of Article VII, section 7, of the constitution. The statute creating this fund frankly authorizes the officials of a county to contract a twenty-year debt for school buildings and to pledge its payment with interest by means of a county tax levy, all without a vote of the people, and the Supreme Court has upheld the act.[76]

The county board of education may, from the amount borrowed from the state, make loans to special charter, local tax or special school taxing districts within the county.

[74] County Government Studies, Department of Rural Social-Economics, University of North Carolina.

[75] *Laws of 1923*, chap. 136, secs. 278-284.

[76] B. R. Lacy, Treasurer, *v.* Fidelity Bank of Durham, 183 N. C. 373.

Such loans are likewise payable in twenty annual installments, with interest thereon at the rate the county is required to pay, payable annually in advance. Any amount so loaned constitutes a lien upon the total local tax funds produced in the district, provided the loan was made upon the written petition of a majority of the committee, or board of trustees, of the local district.

The advantage of the loan fund is that it enables counties and local districts to utilize the credit of the state and borrow at a low rate of interest. The amortization feature is also desirable, in that it prevents the perpetuation of debts by refunding.

Treasurer of School Fund:

Ordinarily, the county treasurer is also the treasurer of the school funds in his county. The law [77] requires that he shall receive and disburse all public school funds and shall keep the same separate and distinct from all other funds. In those counties in which the office of county treasurer has been abolished, the banks which handle public school funds are required to keep the same accounts, perform the same duties, give the same bond, and make the same reports as are required of a treasurer.

The treasurer is required to keep separate the funds which belong to the county and those which belong to each of the special charter districts. He is also required to keep a separate account for each local tax district.[78]

Disbursement of School Funds. The county board of education is required to divide the funds belonging to the county into two classes, (*a*) those apportioned to districts for salaries for instructional service and other regular employees and (*b*) those reserved to the county board of education for all other necessary expenses included in the budget under current expense fund, capital fund, and debt service fund.

The treasurer is permitted to pay out funds reserved to the county board of education only on warrants signed by the chairman and secretary of that board. He may pay out

[77] *Laws of 1923*, chap. 136 (School Law), secs. 193-208.
[78] *Ibid.*, secs. 120, 147.

county funds apportioned to the district for the six months' term, special tax funds, and supplemental funds from other sources only on a properly executed order signed by a majority of the district committee, one of whom shall be the secretary, and countersigned by the county superintendent.[79] All supplements on salaries payable during the six months' term from local taxes must be drawn on separate vouchers, in order that county and district funds may be easily kept distinct.

The treasurer has no right to honor any voucher that has not been approved and signed by the county superintendent or the secretary of the board of education. Furthermore, it is illegal for the county superintendent or the secretary of the board to sign an order on a district fund for more money than is apportioned to and raised by local taxes in that district for the fiscal year. It is likewise illegal to endorse the order of any teacher who does not produce a certificate as required by law, or for more money than the salary schedule in force in the county entitles the teacher to receive.[80] This last ruling is frequently violated.

Annual Audit. On or before the first day of August of each year the county board of education is required to have an audit made of the treasurer's books and of the accounts of the county board of education. The audit must cover not only receipts and expenditures for the six months' school term and a comparison with the budget estimates, but in similar detail the accounts of the local tax districts and special charter districts.[81]

Bookkeeping:

It is the duty of the county superintendent to keep a detailed record of the school finances, both as to receipts and as to expenditures. His records are required to show what is appropriated to each district, the division of the funds between the county and the city, the amount of loans from the state and the dates of payment, the amount of bond issues in each district, the rate of interest, date of payment, etc. It is his duty to keep a record of all local-tax,

[79] *Ibid.*, sec. 197, amended 1927.
[80] *Ibid.*, sec. 122.
[81] *Ibid.*, sec. 198, amended 1927.

special charter, and special school taxing districts in his county, the boundaries of each, the number of taxable polls, the valuation of the taxable property, and the special tax rate voted in each district. It is his duty to keep a record of all fines, forfeitures, and penalties due the school fund, and to see that these funds are deposited with the treasurer and placed to the credit of the school fund. His records should show the certification and salary of each teacher, and his office should have a fund of ready information in regard to the schools of the county, the buildings, the school population, the libraries, the school trucks, etc. These records should be so filed that a comparison between any two years can be made instantly. The law requires that his records shall be kept in such detail and in such an orderly manner that the information for the budgets may be prepared promptly, and any officer or citizen of the county may see what the school in each district is costing and what the total cost is to the county.[82]

It is the treasurer's duty to keep a detailed record of disbursements, with a separate account for each district; but, since all vouchers must be signed by the county superintendent he could easily keep a duplicate record and in many counties does do so. A special ledger has been designed by the State Department of Public Instruction, which is used in ninety or more of the counties.

The law seems to be adequate, and one would expect to find the school records in every county in excellent shape. The county superintendents are much better educated than the average county official; they are presumably men of executive ability and high professional standards, and one would expect to find them exemplars of systematic workmanship. However, this is not always the case. Indeed there have been some instances of great inefficiency and irregularity in the office of the county superintendent. Hereafter the county accountant is to have more control over school finances.

[82] *Ibid.*, secs. 63, 91, 100, 118-121, 139, 147, 222.

CONSOLIDATION OF SCHOOLS AND SCHOOL DISTRICTS

Powers of the Board:

The county board of education has the power[83] to consolidate schools located in the same district and to consolidate school districts, over which it has full control, whenever and wherever in its judgment the consolidation will better serve the educational interests of the county or any part of it. In fact, the law[84] states that the apportionment of the state and county public school fund shall be administered so as to encourage consolidation of districts and the elimination of small schools or small districts, and the State Board of Education may refuse to apportion any part of the state fund to any school or district having an average daily attendance of less than fifteen pupils or to any new school or district created since January, 1919, if the number of districts or the number of separate schools in a county has been increased thereby. The law contains the proviso, however, that no district shall be abolished if the geographical conditions are such that consolidation would seriously limit the educational opportunities of the children of the smaller district. In a word, the state school authorities are definitely committed to a program of consolidation, and the laws are drafted to encourage it.

The county board of education has no right to create a new district or divide or abolish a district, or consolidate districts or parts of districts, except in accordance with a county-wide plan of organization.[85] This is intended to insure a unified plan of consolidation so that each new consolidation will be a step in the direction of a complete and well-balanced county organization. The idea is commendable, but the task assigned to the board of education is a difficult one. It involves community planning on an extensive scale. In locating a consolidated school that will serve the future as well as the present, it is necessary to consider all the geographical factors and social forces which may affect the growth of a community. It is necessary to take cognizance of and attempt to measure those forces which are shifting community boundaries and shaping new communities.

[83] *Ibid.*, sec. 75. [84] *Ibid.*, sec. 80. [85] *Ibid.*, sec. 73a.

Possibilities of the Consolidated School District:

There are immense possibilities in the consolidated school district. It is possible that it may become the primary unit which the South has needed so badly. The township will never become a vital unit, first because its boundaries are too arbitrary, and secondly because it has no center of common interest. Except in New England the township has never been a real community. The automobile has so minimized the barrier of distance that it is doubtful if we now need a political unit smaller than the county. The country people do need, however, an organized community for social and economic purposes. The consolidated school district is flexible enough to conform to the natural community, and with the school as a center of common interest, a healthy community life may be developed. The school, if it functions as it should, would serve the adult population as well as the children. The school building should be a community center in the fullest sense of the word—a center of social life, a center for recreational activities, a civic center, and the school library a clearing house of information for the farmers. To strengthen community consciousness the community should have a name, should constitute an election precinct, and, if possible, should have a post office. It will probably be too small to constitute a trade area except in a limited sense. Automobiles and good roads are enlarging the trade areas. The local accommodation stores will remain in reduced numbers, but the farmers will increasingly depend on the county seat or the larger towns for most of their supplies. The consolidated school district should not cut across the boundaries of natural trade areas if it can be helped. The school district might serve very well as the unit for organizing local chapters of coöperative associations. A great many things could be done by the people of the district through voluntary coöperation. If, at any time, a district wished to incorporate as a governmental unit so that the majority could impose a tax on all, it would have the right to do so under the rural incorporation act.[86] In brief, the consolidated school district should become

[86] *Laws of 1919*, chap. 202; *Consolidated Statutes*, 7380-7393.

the township, if the township is to remain, rather than the township becoming the consolidated school district. Rarely is the present township a natural community.

If the consolidated school district is to become a vital community, it is important that the school building be placed at the right point. In most cases the community which it is to serve is already in existence or is in the process of formation. It is the task of the county board of education to discover these communities and to measure their potential limits. It is not sufficient to lay off an area containing the required number of children, place a schoolhouse in the center of the territory, and expect a community spirit to develop. It might do so under frontier conditions, but not where community loyalties are already established. The ordinary county board of education, if it follows its best judgment, may oftentimes locate a school at the strategic point without ever having heard the term "community-planning." But if it is influenced by tradition, or by personal prejudice, or by a strictly mathematical calculation, or by factional appeal, it is apt to make grave mistakes.

Whether a consolidated school should be placed in a village or in the open country depends entirely on circumstances. No rule can be given that will fit all situations, but ordinarily it would be unwise to establish a large school within two or three miles of a growing town. Whether a village with a static population and with little influence should be favored with a consolidated school or whether a new center should be established depends on circumstances. Consideration would have to be given to such factors as distance between centers, density of population, population movements, layout of highways, and other conditions. Perhaps enough has been said to indicate that this responsibility of the school board is one of far-reaching significance. The location of the schoolhouses may affect the development of the rural regions of the state far more than we can foresee.

Consolidation is not always feasible. There are isolated coves in the mountain counties which can probably be served better by a one-teacher school than by transportation to a larger school. There are one-room schools in nearly every county, which are not accessible to the transportation

lines. Although consolidation has many merits and is the established policy of the State Department of Public Instruction, the system has serious faults and dangers. These are mainly the costs and risks of transportation.

Transportation of Pupils:

Public transportation does not necessarily have to be provided in cases of consolidation, but in most cases one involves the other. Early transportation of school children was by horse-drawn vehicles, and they are still used to a limited extent. But motor transportation is now the prevailing mode. The first motor truck used for this purpose was purchased by Pamlico County in 1917. Edgecombe County purchased a truck later in the same school year. In 1925-26 there were 2,317 trucks in use in the state, transporting 87,283 children daily.[87]

The graded school has undoubted advantages over the one-room school, but the dangers and evils of transportation cannot be overlooked. The busses are usually crowded for at least a part of the distance, thus placing in close juxtaposition children of all ages and all types of character. Ordinarily there is no adult person present, the driver being a boy in his teens. Some of the children may have colds or other contagious diseases, thus exposing the others. Sometimes the busses make such long trips that those who live at the end of the route must leave home early and get back late. Children who live off the main road must sometimes stand out in the cold or the rain until the bus comes along. The roads over which the school trucks travel are not always safe, and it is not always possible to get careful and responsible drivers. Another objection is the fact that the youngest child who comes on the bus must wait at the schoolhouse until the older ones have completed their day's work, a real hardship on the little children. Perhaps none of these objections is any more serious than the objections to the one-room school. Perhaps none of these hardships is any greater than those which the rural child has always

[87] *School Facts*, August 1, 1926, and *Biennial Report of the Superintendent of Public Instruction, 1925-1926.*

suffered. Nevertheless, some of the opposition to consolidation is well-founded.

Benefits of Consolidation:

The benefits of consolidation are, of course, undeniable when measured in terms of educational opportunity. A larger school unit permits the division of the pupils into grades, with longer recitation periods, more instruction for each group, and a broadened curriculum. The ideal is at least one teacher for each grade, but there are many consolidated schools which do not have a teacher for each grade. The larger school usually has better equipment than the one- or two-teacher school, and the argument is generally advanced that it has better teachers, but this is not necessarily the case. No doubt the presence of other teachers is an encouragement to a teacher and helps to maintain higher professional standards.

Perhaps the benefits of the larger school and the larger school district are as much social as educational. It certainly makes life pleasanter for the teachers. One of the greatest objections to the one-teacher school is the isolation, hardship, and privation to which it so often subjects the teacher. Sometimes she is obliged to board where there are no conveniences for her physical comfort and no opportunities for intellectual stimulation. The larger school also enlarges the acquaintance and multiplies the contacts of both children and parents. The importance of this influence on the behavior and outlook of rural people can hardly be overestimated. If the consolidated school district defines a real community and the school becomes a real community center as indicated in a previous paragraph, every aspect of rural life may be quickened and made more inviting.

Extent of Consolidation:

The rapidity with which consolidation has taken place during the last five years is indicated in the following table:

At the end of the school year 1925-26 there were only six counties which had no consolidated schools with four teachers or more. They were Cabarrus, Macon, Onslow, Swain, Transylvania, and Wilkes. On the other hand, Bertie,

RURAL CONSOLIDATED SCHOOLS

WHITE

Year	Four-Teacher	Six-Teacher	More Than Six-Teacher	Total
1921-22	106	74	146	326
1922-23	156	97	205	458
1923-24	130	*161	343	634
1924-25	119	*174	410	703
1925-26	97	*162	437	696

COLORED

1921-22	21	4	4	29
1922-23	23	5	5	33
1923-24	32	*19	6	57
1924-25	46	*34	13	93
1925-26	60	*41	17	119

*Five- and Six-Teacher.

Buncombe, Cleveland, Columbus, Cumberland, Guilford, Harnett, Martin, Mecklenburg, Nash, Robeson, Rutherford, Stanly, and Wake each reported fifteen or more. Granville, Wilson, Guilford, and Johnston led in the number of vehicles used for the transportation of pupils.[88]

It will be noticed that since 1922-23 there has been a decrease in four-teacher white schools and an increase in the larger types. Many of the newer consolidated schools have eight or ten classrooms and are modern in every respect.

Fewer Small Schools:

The consolidation movement has naturally resulted in a steady decrease in the number of one-teacher schools, both white and colored. It has resulted in a slight decrease in the number of two-teacher white schools and a large increase in the number of two-teacher colored schools. The figures for a few selected years are shown in the following table.

[88] *Biennial Report of the Superintendent of Public Instruction, 1925-26.*

ONE- AND TWO-TEACHER SCHOOLS

Year	One-Teacher		Two-Teacher	
	White	Colored	White	Colored
1900-01	5,411	2,418	----------	----------
1901-02	5,491	2,376	----------	----------
1902-03	5,448	2,369	----------	----------
1905-06	4,298	2,075	----------	----------
1910-11	3,908	2,056	----------	----------
1915-16	3,069	1,945	1,708	338
1920-21	2,131	1,567	1,855	605
1922-23	1,796	1,444	1,596	672
1924-25	1,457	1,263	1,328	709
1925-26	1,322	1,188	1,247	706

Fewer School Districts:

Another aspect of the consolidation movement has been the reduction in the number of rural school districts. The number is still large because there are many one-teacher and two-teacher schools still in operation. The decrease is indicated in the following table.

RURAL SCHOOL DISTRICTS

Year	White	Colored	Total
1903-04	5,555	2,376	7,931
1908-09	5,356	2,314	7,670
1913-14	5,423	2,337	7,760
1918-19	5,391	2,431	7,822
1923-24	4,354	2,333	6,687
1924-25	4,106	2,262	6,368
1925-26	3,839	2,267	6,106

Enlargement of the school district is generally a good thing because it tends to equalize the school burden. Of course the county is the unit of taxation for the support of the six months' term. Most of the one-teacher and two-teacher schools operate for only six months; thus in those districts there is generally no special tax. In the consolidated

districts the special tax varies from ten to fifty cents on the hundred dollars, depending quite as much on the amount of taxable property in the district as on the volume of additional expense. In other words, it may cost the taxpayers in one district a fifty-cent rate to secure a benefit that a wealthier district obtains by levying ten or twenty cents. As soon as the eight months' term is made compulsory, the county and state will pay for the extra two months, thus eliminating much of the present inequality. The local district might still impose upon itself an additional tax for special purposes, but the amount would not be large enough to be burdensome.

Several counties have already made the county the unit of school support for an eight or nine months' term. Such counties are New Hanover, Transylvania, Northampton, Gates, Guilford, Carteret, Henderson, and Pamlico for all schools, and Wilson and Vance for the white schools. All white schools in Edgecombe and Currituck counties operate for at least eight months, but support is provided on the district basis, there having been no county-wide vote on the matter.

EDUCATIONAL OUTLOOK

Twenty-five Years of Progress:

There are many standards by which educational progress can be measured, and there is no single standard that will show the progress which education is making in North Carolina. The increase in total annual expenditures for education, the increased investment in school property, the lengthened school term, the employment of better trained teachers, the increase in the number of high schools and in high school enrollment, improvement in average daily attendance, the consolidation of small schools and the gradual extension of educational opportunity to all parts of the state, urban and rural, are all evidences of progress. The progress which has been achieved in North Carolina along all these lines in twenty-five years is truly remarkable.

The accompanying table shows the progress that has been made in twenty-five years so far as the progress can be shown statistically.

EDUCATIONAL PROGRESS IN NORTH CAROLINA[89]

Items	1899-1900	1919-1920	1924-1925
1. Total school expenditure	$ 1,062,303.71	$12,214,258.20	$33,978,063.68
2. Expenditure, current expense	1,004,903.09	9,568,743.10	21,030,810.23
3. Expenditure, capital outlay	57,400.62	2,645,515.10	12,947,253.45
4. Value of school property	1,097,564.00	24,057,838.00	70,705,835.00
5. Average value per schoolhouse	158.65	3,009.50	9,964.18
6. Number of log houses	1,190	94	43
7. Number of white one-teacher schools	5,047	2,513	1,457
8. Number of teachers	8,320	16,854	22,248
a. White	5,753	12,970	16,920
b. Colored	2,567	3,884	5,328
9. Average monthly salary paid each teacher	$ 23.46	$ 69.55	$ 103.04
a. White	24.79	75.90	113.28
b. Colored	20.48	46.85	67.70
10. Average term in days	70.8	134.0	145.2
a. White schools	73.3	135.9	148.0
b. Colored schools	65.3	127.4	136.3
11. Average number days in school	83.2	91.8	106.6
a. White pupils	87.7	95.7	112.8
b. Colored pupils	71.2	81.9	91.3
12. Total school population	657,949	840,981	941,483
a. White	439,431	573,736	643,572
b. Colored	218,518	267,245	297,911
13. Total school enrollment	400,452	691,249	809,834
14. Total average daily attendance	206,918	473,552	596,211
15. Per cent of population enrolled	60.9	82.2	86.0
16. Per cent of enrollment in average attendance	51.7	68.5	73.6
17. Number of public high schools	*30	420	712

18. Enrollment in public high schools	*2,000	29,294	73,593
19. Number libraries			3,194
20. Number volumes in libraries			590,273
21. Educational appropriations:			
a. Public schools—Maintenance	$ 100,000.00	$ †3,476,796.57	$ 1,678,750.00
b. Normal schools—Improvements‡			2,219,000.00
Maintenance	16,000.00	139,600.00	403,000.00
c. Higher institutions—Improvements‡	12,500.00		4,795,000.00
Maintenance	65,000.00	542,500.00	1,565,000.00
22. Per cent illiteracy for State	28.7	13.1	
a. White	19.5	8.2	
b. Colored	47.6	24.5	

* Estimate based on the number of public high schools supported by local taxation.
† When State levied ad valorem tax and apportioned three months teachers' salaries.
‡ Two years, 1923-24 and 1924-25.
[89] *School Facts*, vol. II, No. 23.

Educational Needs:

In spite of the creditable progress which has been made in the last twenty-five years, North Carolina has a considerable distance to go before it can rank high among the states. An index number has been worked out for each of the states based on several comparable factors. Ranked on this basis North Carolina's position in 1924 was forty-first.[90] Perhaps this is nothing to be ashamed of when one considers the handicap which the state has had to overcome. It will be cause for shame, however, if the state is content to remain in this position. Some of the more obvious improvements which need to be made, whether or not they affect the state's rating, will be mentioned briefly.

A Longer School Term. Practically all thoughtful people are agreed that every school in the state should be operated for a minimum eight months' term. Two-thirds of the white pupils of the state are already enjoying an eight or nine months' term. It is grossly unfair to give the other third only six months. Those who enjoy the longer term do so at local expense, and the pupils who must be satisfied with six months are mostly rural children living in districts too poor to provide the extra two months. The only obstacle to a constitutional term of eight months is the lack of sufficient state revenue. It is plain that a longer compulsory term must bring with it more state support. The local communities cannot carry all of the additional burden. There is little doubt but that some means of financing a state-wide eight months' term will be devised very soon. Many of the city schools are already operating nine months and will probably continue to do so. It would be a mistake to require a nine months' term in the country, for the farmer's children can utilize the extra month to very good advantage.

Equalization of the Tax Burden. As already suggested it is important that school costs be equitably distributed. Along with the eight months' term there should be provided an equalizing fund of sufficient magnitude to absorb the abnormal surcharges which now burden the poorer counties and which, with a longer term, would be even more burdensome. Scientific distribution of the Equalizing Fund will

[90] *School Facts*, vol. III, no. 1.

probably require state participation in the evaluation of property. Complete equality may never be possible, but there should be a minimum of discrimination.

Enforcement of Compulsory Attendance Law. Probably the greatest waste in the operations of the school is that which results from irregular school attendance. Taken the state over, the per cent of enrollment in average attendance in 1925-26 was 74.0. A certain amount of absence is inevitable. Sickness and inclement weather are justifiable excuses for absence. But much of the irregularity of attendance in this state is due to contrariness on the part of the parents or to the practice of working the children in the cotton or tobacco fields. In one county a splendid record of attendance was achieved when the people found out that the attendance officer meant business. A few fines and a few jail sentences had a very beneficial influence on the whole population. It is difficult to convince a parent who has been in the habit of utilizing his children's labor in the cotton field that child labor doesn't pay. The school term should be arranged so that the four months of vacation come at a time when the farmer needs his children most, but while school is in session the attendance law should be rigidly enforced.

Eight-Year Elementary Course. In most of the states the elementary school course requires eight years and the high school course four years. In some cases there is a 6-3-3 arrangement with three years in the junior high school and three years in the senior high school. In all cases there are twelve years of preparation before entering college. The quality of work done in the high schools ought to be much improved if North Carolina adopted this arrangement. It would relieve the pressure on the colleges and also give them a more mature entering class. With well-equipped buildings in reach of practically all the children of the state, it would seem a sensible thing for the pupils to use them another year before clamoring for admission to college.

Larger Use of the School Plant. The splendid consolidated school buildings scattered over the state, in villages and in the open country, should be put to a larger use. The schoolhouse should be a community building in which

meetings, lectures, motion pictures, plays, banquets, games, dances, and all sorts of social gatherings take place. Most of the newer buildings are provided with auditoriums, and there is every indication that they will be put to many good uses.

Teachers' Homes. There is an increasing tendency to build alongside the consolidated school a home for the teachers. This is a desirable practice and one that should be extended. It not only makes the teacher's life more comfortable, but it relieves her of many unpleasant experiences. It removes one of the major reasons why teachers move so frequently. They have been obliged to move in search of better living conditions. The principal of the school should be provided with a comfortable cottage independent of the teachers' home, where he can live all the year. During the vacation period it should be his duty to look after the school property and also serve the district as a sort of social secretary. He could promote organized recreation, civic enterprises, and coöperative activities among the farmers, and serve the community very much as the schoolmasters do in European countries. It is not necessary to pay a school executive much more for twelve months' service than for eight. Of course he should be paid enough so that the right man can be retained year after year. The position ought to offer a career to men who have a capacity for social organization.

The District an Organized Community. The consolidated school district should conform as far as possible to a natural community, or what can be developed into a community. It should be a conscious social, civic, and economic unit. It might even replace the township as a political unit. This subject has been discussed in an earlier section and need not be discussed further here.

Improved Curriculum. It is not the place in a treatise on county government to discuss the school curriculum at any length. An additional year in the elementary or junior high school has already been suggested. The extra year should probably be utilized for the most part in strengthening the child's grasp of fundamentals. The three R's are, after all, the tools with which one acquires other knowledge, and it is im-

portant that they be mastered. There are, however, certain facts and certain attitudes which must be instilled into the minds of all boys and girls who are going to spend their lives in the country, and which really ought to reach all boys and girls whether they are to live in the country or the city. They should acquire: (*a*) a correct conception of the farmer's economic position in the present industrial economy. They should understand coöperative marketing and its relationship to the farmer's economic salvation; (*b*) They should understand and acquire the correct attitude toward government, especially local government. They should see it as a coöperative or collective activity and understand its administrative problems. These two studies are important in a rural state like North Carolina, because their aim is to adjust the youth to his environment, to set him to thinking straight, to help him get his bearings as a producer in a complex economy and as a citizen in a complex social order. It is not necessary, perhaps, that any new courses be introduced. These are truths to be explained in connection with civics, or geography, or history, or in chapel hour. It doesn't matter when or under what name they are presented. The essential thing is for every student, before leaving school, to understand where he stands in the present social order and in what direction he ought to move. It is a matter of attitude as well as of knowledge, and quite as much the product of inspiration as of information. Unless the modern youth acquires the attitudes and habits of coöperation, he is not prepared for citizenship.

Better Teachers. The facilities for teacher-training are being improved steadily, and a larger and larger percentage of the teachers have professional certificates. There are some counties, however, which still employ many teachers with inferior certificates. The untrained teacher should gradually be eliminated. And along with professional training there should be real consecration on the part of the teacher. She should consider herself a public servant and responsible in large measure for the civic attitudes of those who have been her pupils.

Adult Education. With eleven out of every one hundred adult whites and twenty-four out of every one hundred adult

negroes illiterate, it is evident that the educational program of the state ought to reach more than those of school age. We cannot comfort ourselves with the thought that illiteracy will end with the present generation. Illiteracy tends to perpetuate itself. The children of illiterates are likely to attend school so irregularly and receive so little encouragement at home that they fail to acquire even the rudiments of an education. Besides, there are many men and women still young or in middle life who were denied the advantages of school and who should now be offered an opportunity to overcome their handicap.

A few years ago there was quite a wave of interest in the adult illiterate; teachers volunteered their services for night classes, and some progress was made. The enthusiasm soon waned, however. Now there has just been launched by the United States Bureau of Education and the General Federation of Women's Clubs a nation-wide crusade against adult illiteracy. The goal of the campaign is to remove as far as possible the blight of illiteracy before the 1930 census is taken. It is gratifying to know that these agencies have found in Buncombe County in this state a model for their activity. For six years the so-called community schools of Buncombe County have been in operation and approximately 4,000 native white adults have been enrolled, with at least one thousand completing the course. Mrs. Elizabeth C. Morriss deserves the credit for getting the schools established, and she has remained their director and inspiration. The larger objective in the present campaign is to secure for the education of native adult illiterates a definite place in the state and county educational systems.

More Democratic Control. The North Carolina system of school administration is admittedly undemocratic. Whether the lack of popular control has been an injury or a benefit is a debated question. It is very doubtful if local initiative would have brought the hundreds of new school buildings, the rapid consolidation, the longer school term, the higher standard of education in its many phases. There is a degree of standardization in teacher-training, in salaries, in schools methods, in educational product, that probably could not have been brought about except by control from the top. The situation was complicated, too, at the beginning of the present school

epoch by a racial question, by a serious political cleavage, and by a general unwillingness to bear local taxes for public schools. Thus, if the system is autocratic, it began so out of necessity and has remained so because the results were too encouraging to justify a reorganization. If the state is to continue to control the schools, it should furnish more of their support; if the locality must support them, it should enjoy greater control. Wherever the support comes from, there should control reside.

It is possible that the time has now arrived when a larger measure of control should be given to the people, that is, a larger measure of local self-government. The racial danger has passed; the political antagonism has softened; the rank and file of the people are more intelligent; and the principle of popular education has been generally accepted. Popular control has not brought disaster in other states. Why should not the parents and taxpayers of a local district select their own committeemen? And why should not the people of the county have a chance to select the board of education just as they now select a board of county commissioners? Some of the people think that the county superintendent should be chosen by popular vote, but that would be a mistake. He is an administrative officer and should be appointed, as now, by the board, but the board itself is a policy-determining body and might properly be chosen by the people. It is possible that for a time the quality of the board might suffer, for some who now accept an appointment would not enter a political campaign. The ideal method of selecting the board would be through the use of a preferential ballot, with an unlimited number of nominations by petition but no party nominees. Thus, if there were three to be selected, there might be seven or ten nominees and the voter would express his first choice, second choice, third choice, and so on. Until this improved method of selection is more understood, it would probably answer as well to require a bi-partisan board.

Better Financial Control. In conclusion it might be well to emphasize again the need of rigid financial control in school finances. The school accounts should be audited by the county auditor, and if there is a county purchasing agent, he should be responsible for the purchase of school

supplies, at least the larger purchases such as school trucks, coal, and furniture. Of course, the superintendent should be consulted as to the relative merits of various kinds of school supplies. There is no evidence that school expenditures have been any less wasteful than expenditures in other departments. There is no evidence that school property has been any better cared for. There is no evidence that school finances have been any better safeguarded. Half of the taxpayer's dollar goes into the school fund, and it is just as important that waste and inefficiency be eliminated in school administration as in the other departments of county government.

COUNTY LIBRARIES

According to a recent report of the American Library Association[91] over two hundred counties in thirty-two states have established county library service. California has gone farther in this movement than any other state, with the service extended to forty-six of the fifty-eight counties. In New Jersey a third of the counties have libraries. Washington County (Hagerstown) has the distinction of having operated the first book truck. A village or city library receiving a few hundred dollars appropriation from the county is not considered a county library. A county library is one established by the county governing body or by popular vote, serving the entire county through conveniently located branches, and supported wholly or in large part by a county-wide tax.

North Carolina ranks very low in library facilities, 70 per cent of the people of the state being without library facilities of any kind, except the service rendered by the North Carolina Library Commission and college and university extension service. Eighteen of the twenty-one largest towns and cities have public libraries, some of which serve the surrounding rural areas in a limited way. There are a few village libraries, and of course numerous school libraries with limited book collections. Nevertheless there are forty-six counties with no public library service.

In regard to county libraries the latest report of the North Carolina Library Commission says:

[91] *A Handbook for Rural Leaders, 1927.*

While there has been no aggressive county library campaign, the Commission has advised the new libraries which have been organized, as well as organized libraries in a position to do so, to adopt the county unit. The Boards of County Commissioners of Mecklenburg, Stanly and Wake counties have made continuing appropriations in coöperation with the City Boards of Aldermen of Charlotte, Albemarle and Raleigh for library service to county residents. Wilson County has provided quarters in its new courthouse for the Wilson County Library. Guilford County in addition to the appropriation for the Greensboro Public Library has made an appropriation for the High Point Public Library. There are all together thirteen counties in the state providing library service in varying degrees for their rural residents. Except in a few instances they are far from adequate, but these sums in the hands of competent librarians will demand more. The counties making appropriations are: Burke, Chowan, Durham, Forsyth, Guilford, Mecklenburg, New Hanover, Rowan, Stanly, Vance, Wake and Warren.

At Lincolnton the Lincoln County Memorial Library has been opened. This library was established by the civic and patriotic clubs of the city, and is free to county residents.[92]

The Library Commission of North Carolina lends books to residents of the state without charge except postage to and from Raleigh. The Commission also sends traveling libraries of forty volumes to communities, selected libraries to elementary schools, and package libraries to reading clubs. As a publicity feature a book truck toured the counties of Randolph, Moore, and Montgomery in 1925 and introduced the state's library service to the people of these counties. The work is supported by the state, but the appropriations so far have been too meager to permit very much expansion.

The public school libraries have been pitifully inadequate, but the weakness is being recognized and will gradually be overcome. An accredited school must meet certain minimum requirements as to library facilities. The library fund of the state school appropriation has also been increased. Fourteen high schools now have libraries sufficient to warrant full-time librarians. The Parent-Teacher Associations and other civic organizations can render a great service to the schools in this field.

[92] *Ninth Report of the North Carolina Library Commission, 1926.*

Chapter X

PUBLIC WELFARE AND PUBLIC HEALTH

THE STATUS OF PUBLIC WELFARE

"Public welfare" is rather a new term in North Carolina, and to many people it carries no definite concept, certainly not a correct concept. Dr. Howard W. Odum defines public welfare as "that very definite service of democratic government which provides organization, technique, and means for making democracy effective in the unequal places." "What public education," he says, "was to the last half of the last century in the development of the democratic ideal, public welfare may well be to the first half of this century. Indeed it seems very probable that progress in the field of public welfare will constitute the outstanding contribution of the half century toward progress in American democracy. But like public education, long considered unnecessary, dangerous, and bringing the stigma of charity to its recipients, public welfare must needs take its time to get under way, and must be misunderstood, misinterpreted, and surrounded by limitations that impede its progress."[1]

There is, however, a growing appreciation of public welfare work. Taxpayers are beginning to recognize the economy of it. When they pause to consider that the care of dependent, defective, and delinquent classes accounts for approximately one-fifth of state expenditures, as well as large outlays by the counties and cities, they may discover that it is more economical to keep people out of institutions than to build larger and larger institutions. Public welfare activities aim at prevention and take the place of the older ideas of charity and correction. This is not only more economical but more logical, more just, more democratic. Public welfare work is a definite and important part of government and is beginning to be so recognized.

[1] Odum and Willard, *Systems of Public Welfare*, pp. 4-5.

ORGANIZATION

Public Welfare in North Carolina:

The present system of public welfare in North Carolina did not evolve slowly and gradually over a long period of time; it has all developed within the last ten years. It is true that the North Carolina Board of Public Charities had existed since 1868, but its functions were very limited. As a result of the efforts of a few public-spirited citizens, the legislature of 1917 was induced to pass a state-wide public welfare act.[2] The State Board of Charities and Public Welfare was created with powers and duties much larger than those of the preceding board. In order that the work might be extended to the counties, the county commissioners were given power to create county boards of public welfare and to elect a county superintendent of public welfare. The law as it related to the counties was optional, and only two counties had perfected organizations when the next legislature met. The 1919 legislature amended the act, making it mandatory for every county to create a county board of public welfare.[3] In counties with a population of 25,000 or over (later amended[4] to read 32,000) a superintendent of public welfare was required. In counties which did not choose a superintendent of public welfare, the superintendent of schools was required to perform the duties of the office. The state-wide juvenile court act was passed in 1919 creating a juvenile court in every county with the clerk of the superior court as judge.[5] Thus the machinery was set up to carry on a state program of public welfare.

The State Board of Charities and Public Welfare:

The North Carolina Board of Charities and Public Welfare is composed of seven members, at least one of whom must be a woman. The members are appointed by the Governor with the confirmation of the General Assembly, and serve without pay.[6] The terms are six years, two expiring in 1927, two in 1929, three in 1931, and so on.

[2] *Laws of 1917*, chap. 170.
[3] *Laws of 1919*, chap. 46.
[4] *Laws of 1921*, chap. 128.
[5] *Laws of 1919*, chap. 97.
[6] *Consolidated Statutes*, 5004.

The board appoints a Commissioner of Public Welfare who acts as its executive officer. The work of the state board has been divided into five bureaus to carry out the duties and requirements specified in the law. These five bureaus are (1) County Organization, (2) Institutional Supervision, (3) Child Welfare, (4) Mental Health, and (5) Promotion and Publicity. To a large extent the county is the unit through which the state board acts, and it is with the county organization and activities that this chapter is concerned.

County Units:

According to the latest report of the state board[7] there are fifty-seven counties in the state which have organized departments of public welfare. Of this number forty-six have whole-time superintendents of public welfare and eleven employ part-time workers. In the remaining forty-three counties the county superintendent of schools is *ex officio* superintendent of public welfare. Six of the most densely populated counties employ a number of additional workers to assist with probation, school attendance, and family case work. In most instances where there are additional workers there is a joint arrangement between city and county authorities.

Buncombe, Durham, Forsyth, Mecklenburg, and Wake counties have a boys' probation officer, a probation officer for girls, a negro worker and one or more clerical assistants. Guilford County employs an assistant superintendent of welfare, one probation officer, and a negro worker to assist the county superintendent of public welfare, with a clerical force in addition. A branch office of the Guilford County department of public welfare has been established at High Point and, by special arrangement with that city, an executive secretary, a boys' commissioner, and a part-time Negro worker are employed. The city of Greensboro also has a part-time boys' commissioner.

Of the fifty-seven counties with whole or part-time superintendents of public welfare, only twenty-nine have sufficient population to make the office compulsory. In two

[7] *Biennial Report*, July 1, 1924 to June 30, 1926, p. 68.

other counties it is mandatory by special statute. Thus there are twenty-six counties which have organized the work voluntarily. Ordinarily, welfare work is denied the proper attention when it is left to the county superintendent of schools. He is not likely to have the time for it even when he has the interest.

County Boards of Public Welfare:

Each county in the state has a county board of public welfare, composed of three influential men and women who are actively interested in welfare work. The members of the county board are appointed by the state board for terms of three years, one retiring each year. They choose one of their number chairman, and the county superintendent of public welfare, if there is one, acts as secretary. The law states that they shall meet at least once each month with the county superintendent of public welfare and advise with him in regard to problems pertaining to his office.[8] Not all of the boards, however, meet with regularity.

The report of the state board has this to say of the county boards:

> In the counties of the state which have no superintendents of public welfare, the boards assume the responsibility for certain phases of the work. In Haywood County the board takes care of all emergency relief and cases in need of orthopedic treatment, makes all Mothers' Aid investigations, and supervises the approved cases. In 1925, the board arranged for a mental health and hygiene clinic which resulted in the establishment of ungraded classes in the Waynesville schools.
>
> In Chowan County the county board of public welfare assists the superintendent of schools in all emergency and poor relief work.
>
> The Ashe County Board of Public Welfare has supervised the Mothers' Aid cases, coöperated with the Division of Child Welfare of the State Board of Charities and Public Welfare in all cases pertaining to child welfare, and has been responsible for the emergency relief work.
>
> Because of their devotion to the work, the county boards of public welfare have rendered a great service to the counties and

[8] *Consolidated Statutes*, 5014-5015.

the state, but their field of activity should be enlarged by giving them more legal authority in matters pertaining to the county welfare departments. It is recommended that the board have a voice in the election of the county superintendent of public welfare, also make up the annual budget of the department, subject to the approval of the county commissioners; that regular monthly meetings be required and the board members paid *per diem* and mileage for all regular and call meetings.[9]

The writer's observations confirm this estimate of the work of the county boards of public welfare. The members usually display a genuine interest in the welfare activity, give freely of their time and money, and support the superintendent loyally. That they should have legal authority to execute the plans which their investigations and best judgment dictate is unquestioned. It would seem entirely proper that they be given a voice in selecting the county superintendent of public welfare, and that they should have a modest appropriation to spend at their discretion. Of course, an account should be rendered therefor. The writer is not inclined to favor a per diem for the members of the board, and he doubts if the fine spirit of service which now prevails could be maintained if the element of pay were introduced. The board and all that it stands for would certainly suffer in popular esteem. There ought to be just as much willingness to serve on a public board without pay as to serve on the board of trustees of a church or hospital. Possibly the quality of the county board of education and of the board of county commissioners would be improved if there were no compensation. Of course, those who serve the public on any of these boards should be reimbursed for actual expenses.

County Superintendent of Public Welfare:

Manner of Selection. The county superintendent of public welfare is elected on the second Monday in July in the odd years by the county board of education and the board of county commissioners in joint session. He is elected for a term of two years. No person can serve who does not satisfy

[9] *Biennial Report (1924-1926)*, pp. 70-71.

the state board that he is qualified "by character, fitness, and experience" to discharge well the duties of the office. No one elected may begin work until he has received a certificate of approval of his fitness from the state board; and in case such approval is not received, the two boards are required, upon receiving notice thereof, to proceed immediately to elect another person. In case of a tie vote, the matter may be referred for decision to the state commissioner of public welfare.

A joint session of the two boards may be held at any time on the call of the chairman of either board for the purpose of discussing the work relating to the office; and a superintendent may be dismissed by joint action for proven unfitness or failure in the performance of duty, and his successor elected. The salary of the superintendent of public welfare is fixed by the joint meeting and one-half is paid from the funds of each board.

Whenever a county superintendent of public instruction becomes *ex officio* county superintendent of public welfare, he is entitled to no additional salary, but the board of education, by and with the approval of the board of commissioners, must furnish him such clerical or other assistance as it deems necessary to have the compulsory school attendance law fully enforced, and the board of county commissioners must furnish a reasonable expense fund for carrying out the other duties attached to the office. The fact that a person is also superintendent of schools does not excuse him from any of his duties as a welfare officer. Every county superintendent of public welfare must make such reports of his work as the two boards may require.[10]

Powers and Duties. The statute of 1919 thus enumerates the powers and duties of the county superintendent:[11]

> The county superintendent of public welfare shall be chief school attendance officer of the county, and shall have other duties and powers as follows:
>
> 1. To have, under control of the county commissioners, the care and supervision of the poor, and to administer the poor funds.
>
> 2. To act as agent of the state board in relation to any work to be done by the state board within the county.

[10] *Laws of 1921*, chap. 128. [11] *Consolidated Statutes*, 5017.

3. Under the direction of the state board, to look after and keep up with the condition of persons discharged from hospitals for the insane and from other state institutions.

4. To have oversight of prisoners in the county on parole from penitentiaries, reformatories, and all parole prisoners in the county.

5. To have oversight of dependent and delinquent children, and especially those on parole or probation.

6. To have oversight of all prisoners in the county on probation.

7. To promote wholesome recreation in the county and to enforce such laws as regulate commercial amusement.

8. Under the direction of the state board, to have oversight over dependent children placed in the county by the state board.

9. To assist the state board in finding employment for the unemployed.

10. To investigate into the cause of distress, under the direction of the state board, and to make such other investigations in the interest of social welfare as the state board may direct.

The superintendent of public welfare also has certain duties as the authorized agent of the State Child Welfare Commission. These are as follows:[12]

1. To act as the commissioned agent of the State Child Welfare Commission, and assist in enforcing the child labor law and other acts relative to business and industry.

2. To supervise and direct the child in employment.

3. To issue certificate for employment and to establish age.

4. To investigate and make detailed inspection of places prescribed in the law.

5. To exercise the necessary authority in correcting violations discovered.

6. To record and report the duties performed as required by rules of the commission.

A mere enumeration of the powers and duties of the superintendent of public welfare does not suggest the full range of his activities nor the potentialities of the office. Much depends on the initiative of the officer himself. When the work is new in a county the superintendent of public welfare must make it his business to get acquainted with the people and establish himself in their confidence. He must survey his territory and discover the people who need his

[12] Rulings of the State Child Welfare Commission, August 6, 1919.

services. One superintendent expressed it, "At first I had to seek the work, but now the work seeks me." No doubt it would increase the dignity of the office and the efficiency of the work if the superintendent of public welfare had larger discretionary powers. He often finds it a great handicap, and something of an embarrassment, to have to go before the commissioners and solicit an appropriation every time he wants to spend five or ten dollars. Nevertheless, it is to be expected that the powers of a new office should be somewhat circumscribed. No doubt, as the work of the office gains in prestige, the additional powers will be granted. Even now some boards of commissioners are giving the welfare department a great deal of freedom.

It is not possible in a book of this compass to treat comprehensively all of the many phases of welfare work. A few comments on each of the major activities will have to suffice.

PUBLIC WELFARE ACTIVITIES

Enforcement of Compulsory School Law:

The superintendent of public welfare is also the chief school attendance officer. It may be inferred that since he receives half his salary from the school fund, he should give a considerable portion of his time to this work. Yet this duty is one which some welfare officers are inclined to neglect. Perhaps this is because it is unpleasant to interfere with the exercise of parental authority.

The compulsory school age is seven to fourteen, and it is the duty of parents or guardians to see that normal children between those ages are in regular attendance. Parents or guardians violating the compulsory school law are guilty of a misdemeanor, and upon conviction are liable to a fine of from five to twenty-five dollars or, upon failure or refusal to pay the fine, an imprisonment not exceeding thirty days in the county jail. It is the duty of the attendance officer to investigate and prosecute all such violations. The county board of education or the trustees of the city school system may appoint local attendance officers to assist the county official when it is deemed necessary.[13]

[13] *Consolidated Statutes*, 5758-5762, amended in *Public Laws of 1921*, chap. 179.

Administration of Poor Relief:

Ever since the sixteenth century it has been a generally accepted proposition that the local government should care for the poor living within its jurisdiction. Prior to that time poor relief was a function of the church. Each county in North Carolina is liable for the care of the poor who have a legal settlement in that county. The law[14] recognizes the following principles as bases for legal settlements. (*a*) Every person who has resided continuously in any county for one year shall be deemed legally settled in that county; (*b*) Married women have the settlements of their husbands; (*c*) Legitimate children have the settlement of their father until they gain a settlement of their own; (*d*) Illegitimate children have the settlement of their mother at the time of their birth. Neither legitimate nor illegitimate children gain a settlement by birth in a county, if neither of their parents had any settlement therein; (*e*) Every legal settlement continues until it is lost or defeated by acquiring a new one, within or without the state, and only until then. The commissioners of any county may cause the removal of any person who comes into the county and is likely to become a public charge, to the county in which he was last legally settled; and they may recover from such county by action all charges and expenses incurred for the maintenance or removal of such poor person. The board of commissioners of each county is authorized to provide by taxation for the maintenance of the poor, and to do everything expedient for their comfort and well-ordering.[15] The constitution[16] allows one-fourth of the receipts from the poll tax to be applied to the poor fund. Ordinarily, there is no specific property tax for this fund, appropriations for poor relief being made from the general county fund.

A rather extensive study of poor relief in the several counties has recently been made by the State Board of Charities and Public Welfare. The ninety-two counties from which reports were received were ranked on the basis of tax rates on one hundred dollars' worth of taxable property necessary to raise the amounts expended for the maintenance

[14] *Consolidated Statutes*, 1342.
[15] *Consolidated Statutes*, 1335.
[16] *Constitution*, art. V, sec. 2.

of the county home and for outdoor relief. The rates vary from $.083 in Avery County to $.002 in Tyrrell County. The median rate is $.028.[17]

Poor relief is classified as *indoor relief* if the beneficiary is placed in an institution (generally the county home), and as *outdoor relief* if the beneficiary lives at home or with friends and receives doles from the public treasury.

The County Home. An investigator from another state a few years ago described our county homes as atrocious. If he were to return today, we believe he would give a more favorable report. There are still county homes in the state of which we are not proud, but most of them would be a credit to any state, at least so far as buildings are concerned. The bulletin referred to above reports that since 1919 twenty-five counties—Alamance, Burke, Caldwell, Chatham, Cherokee, Clay, Durham, Guilford, Halifax, Jackson, Johnston, Nash, Northampton, Onslow, Person, Polk, Randolph, Robeson, Rowan, Rutherford, Stanly, Vance, Watauga, Wayne, and Wilson—have erected new county homes. With three exceptions—Cherokee, Clay, and Polk—these are substantial brick structures costing from $20,000 in Watauga to $175,000 in Robeson. Their aggregate cost was approximately $1,000,000.[18] Since then Caswell and Sampson counties have built new homes. There are several other counties with very creditable buildings. Some of the newer institutions are almost "palatial," with electric lights, steam heat, hot and cold water, and other modern conveniences. In some of these homes the inmates are enjoying more physical comfort than they have ever had before. In fact, in some cases the inmates are unhappy because conditions are so "unnatural." Even where the buildings are steam-heated it has been deemed desirable to put in fireplaces, so that the old people can continue to poke the fire and spit. Several of these newer homes have one or more rooms equipped especially for the sick—an infirmary it might be called.

The conditions described above are, of course, excep-

[17] *Poor Relief in North Carolina*, being Special Bulletin No. 4, of the North Carolina State Board of Charities and Public Welfare, p. 50.

[18] *Ibid.*, p. 10.

tional. There are buildings of every description, even log cabins and wretched shacks. Until quite recently a common type of county home was a group of two-room cottages. A number of these remain. Usually these cottages are small frame buildings with a chimney in the middle, providing an open fireplace in each of the two rooms.[19]

Many of the homes, including some of the new ones, are poorly furnished. "A cheap bed—usually a double bed—a cheap straight chair for each inmate, sometimes a table,—these are the typical furnishings of a room in the majority of the county homes. Such luxuries as closets, bureaus, chests, or mirrors are exceptional."[20] Most of the homes are kept fairly clean—some almost immaculate—others are wretchedly dirty and infested with vermin. Quite often the old ladies are interested in flowers and are allowed to have them in their rooms; papers and magazines are rarely in evidence, but of course many of the inmates are illiterate.

In some cases the supervision in the county homes is of very inferior quality. The superintendency of the county home is considered a political plum, and thus to be changed with each change of administration. It is surprising that there should be any competition for the position, for the work is disagreeable and the remuneration is not large. There are always plenty of men, however—frequently tenant farmers—who are attracted by the prospect of a farm and a salary at the same time. If one has a large family of children he figures that he will get them supported at county expense, and that his wife will look after the inmates. Perhaps if there are only three or four inmates, he is not disappointed in his expectation, but if there are very many inmates to look after, he finds his farm work much interrupted. Ordinarily, the keeper and his wife are kind and considerate of the old people and care for them the best that they know how. But having had no training they do not know how to handle the difficult problems which arise. Oftentimes the inmates are given the kind of food they crave regardless of whether it is good for them. With better facilities and with the welfare superintendent and the health

[19] *Poor Relief in North Carolina*, p. 11. [20] *Ibid.*

officer dropping in frequently, conditions are much improved over those that existed a few years ago.

Some of the superintendents are men of very low mentality; often they are shiftless and fail almost completely as farmers. Sometimes the matrons are of the same sort, but not usually. In most cases, the writer has found the superintendent's wife thrifty and industrious. Not infrequently she does the cooking, looks after the inmates and the housework, and cares for several small children of her own.

Practically all the county homes have rather large farms attached. In 1922 the acreage of the one hundred homes amounted to sixteen thousand acres, only about one-fourth of which was in cultivation.[21] Since then a few counties have wisely reduced the size of the farms, for a large farm in connection with a county home is rarely, if ever, profitable. "It would be a matter of little importance," says Mr. Roy M. Brown, formerly the Director of the Bureau of Institutional Supervision of the State Board of Charities and Public Welfare, "whether a county home farm pays, if it could be shown that the farm is producing in as great abundance as needed those foods which are best suited to the needs of the inmates and which may best be had in desirable abundance and quality only when produced at home. But this is rarely if ever true. . . . As a rule the raising of vegetables is secondary to the production of a money crop. . . . More often the farming is done in such a slipshod way that neither vegetables nor other crops are a success. Usually the superintendent reports that he produces plenty of vegetables, but in most cases a look at the county home garden is proof that he does not appreciate the meaning of plenty of vegetables. What is true of vegetables is also true of milk, eggs, and meat. Very few counties make any provision for a milk supply. This is true also of eggs. Practically the only kind of meat produced on the county home farm is hog meat."[22] This is deplorable, but it is not easy to change the diet of old people. Coffee and corn bread, hog meat and tobacco are what they have been used to and perhaps it is more humane to give them what they

[21] *Ibid.*, p. 8.

[22] *Ibid.*, pp. 9-10.

crave than what they ought to have. Of course, there are plenty of instances where the inmates do not get even the simple variety which they crave. There is no excuse for denying them a variety of vegetables, eggs, milk if they like it, and a reasonable amount of lean meat.

There were in 1922 about seventeen hundred and fifty people in the ninety county homes of the state then in use. Twenty-six counties at that time had fewer than ten inmates each in their respective county homes. Seventy-one had fewer than twenty-five. Only nine had forty or more.[23] The estimated population in 1926 was 1,800, or about the same as thirty years ago. Thus, during this period the number of inmates per thousand population has decreased slightly in most of the counties. The general decrease in the ratio of indoor poor is due largely to the elimination, or partial elimination, of certain classes of persons who were formerly sent to the poorhouse in large numbers. Children, instead of being sent to the county home, are being taken care of in orphanages. Caswell Training School has relieved the counties of the care of some of the feeble-minded. The hospitals for the insane are removing that type of inmate from the county homes. There is a more thorough investigation made before a person is sent to the county home than there used to be.

Notwithstanding the fact that progress has been made toward eliminating certain classes from the county homes, these institutions still shelter a varied group. Of the 1,750 inmates in 1922 about seven hundred were definitely feeble-minded, and of these one hundred and thirty-three were women of child-bearing age. About three hundred were insane, and of these fifty-five were forcibly confined in their rooms or in cells. It was estimated that not more than 15 per cent of the total number of inmates were mentally normal. Seventy-nine children under sixteen years of age were found, about half of whom were feeble-minded. Eight boys were serving sentences as juvenile delinquents.[24] It is not uncommon for illegitimate, feeble-minded children to be born at the county homes. Many of the inmates are

[23] *Ibid.*, p. 17.

[24] *Ibid.*, p. 18.

afflicted with some chronic malady and in need of regular medical attention.

The law[25] requires that the superintendent of the county home shall keep a record book giving the following information: name, age, sex, and race of each inmate; date of entrance or discharge; mental and physical condition; cause of admission; family relation and condition; date of death if in the home; cost of supplies and per capita expense per month; amount of crops and value, and such other information as may be required by the board of county commissioners or the State Board of Charities and Public Welfare. Such report is to be filed annually on or before the first Monday of December. Very few counties are keeping this record. Some keep no records, though most keep a record of a crude sort. Quite often the superintendent is illiterate and thus unable to keep a record. Few have the ability to keep an adequate record. There are a few counties where excellent financial records of the county home and farm are kept, but they are kept by the auditor and not by the superintendent.

Enough has been said about the county home to reveal the fact that it presents many serious problems. First of all, it presents a social problem. The aged and infirm, who through misfortune or improvidence find themselves dependent on public charity, should not be confined indiscriminately with the insane, the feeble-minded, the criminal, and the degenerate. Neither should children be housed with a motley array of human derelicts. Most of all, the county home should not be a breeding-place for the feeble-minded. The various types of dependent humanity should be segregated and cared for in specialized institutions. When the county home becomes a dumping ground for all sorts of human wreckage, it ceases to be a home, and is no fit place for those whose only crime is their poverty.

The pronounced progress that has been made in the physical improvement of our county homes is evidence of a more humane and more intelligent attitude toward the unfortunates. It is hoped that that same spirit will stimulate the development of specialized institutions with experts in

[25] *Consolidated Statutes*, 1337.

charge for each type of dependent and delinquent. Such a policy is desirable both as a protection to society and as an act of kindness to the individual beneficiaries.

Specialized institutions cannot be denied on the ground of expense, for no institution is more extravagant and wasteful than the average county home. The old type of poor farm is passing and it is well that it is. Modern enlightenment will not tolerate such holes of iniquity, disease, and filth. The modern, sanitary, properly equipped, properly supervised homes are too expensive to be justified in every county. The capital investment and overhead costs are almost as great with fifteen inmates as with fifty. No home ought to be operated with less than forty inmates as a minimum, yet there are only nine counties in the state with forty or more.

There are about 1,800 inmates in the county homes of the state. If the insane, the children, the idiots, the imbeciles, and the feeble-minded women of child-bearing age were removed to specialized institutions, there would remain approximately 1,200. These could be comfortably and adequately accommodated in twenty-five or thirty institutions. This is just about the number of first-class homes built since 1919. In other words, we do not need any more county homes until the present ones of the better sort are filled to capacity.

To illustrate: Caldwell County has a new $50,000 home on a sixty-acre farm. There are nineteen inmates; the building would easily accommodate forty. The superintendent receives the use of the farm and $12.50 per month per inmate. This may be an unwise method of compensation, but in Caldwell County it seemed to be working satisfactorily in 1925. At that time the superintendent kept five good Jersey cows, a flock of two hundred fowls, and several pigs. He was raising a good supply of vegetables. Apparently he was setting an unusually good table. The building has all the modern conveniences and was, at that time, in an immaculate condition. The inmates seemed very cheerful and contented. One whole room was filled with potted flowers, the especial charge and pride of an old lady who was confined to a wheel chair. The point of this illustration,

however, is to indicate costs. The farm and home represent an investment of at least $60,000. If we allow 5 per cent interest on the investment and 5 per cent depreciation on the building and equipment (worth, say, $54,000), each inmate is costing the county not $12.50 but $37.50 per month. If there were forty inmates instead of nineteen the cost would be reduced to $24.37 per inmate per month. This computation does not take account of clothing, medical attention, and incidental expense.

Now let us take another example. Alleghany County has a county farm of fifty-five acres. The buildings are in wretched condition and the county is contemplating the construction of a new and modern home. There are four inmates. The keeper receives the use of the farm and $11 per month per inmate. Neither the keeper nor the inmates enjoy any of the comforts found in the Caldwell County home. The farm is a poor one for agricultural purposes but, because of its location, could be sold at a good price, at least $8,000. To build a new home would cost at least $15,000, which with farm, furnishings, and equipment would make an investment of approximately $24,000. The interest saving alone would pay for the four inmates in the Caldwell home at $25 per inmate per month. Such an arrangement would be to the mutual advantage of both counties.

Mr. Roy M. Brown estimated the per capita cost in eighty-six counties based on 1921 reports. Exclusive of interest and depreciation costs, he found the figures ranged from $2.43 per month in Scotland County to $87.51 in Pitt County. The cost in twenty-five counties exceeded $30 per inmate per month.[26]

Except in a few populous counties the number of paupers is too few to warrant a separate home. Three or four adjacent counties should unite in supporting one institution with a capacity of fifty or sixty. If one has already built a modern home, that one should be utilized to capacity or nearly so. If each of three or four contiguous counties has a satisfactory home, partly filled, inmates might be drawn

[26] *Poor Relief in North Carolina*, pp. 58-59.

from more distant counties, or one or two of the homes might be converted into specialized institutions.

Some have advocated large district homes, perhaps one for each congressional district. It is doubtful if much would be gained by such large units. The essential thing is to eliminate the homes that are unfit and those with a small number of inmates, and distribute their occupants among the better homes already built. No more new homes should be built until existing ones are filled. Whether homes be owned jointly by two or more counties, or whether one county owns the building and takes inmates from other counties on a pro rata basis is immaterial. There would seem to be no need for dividing the state into rigid districts.

There is a law[27] on the statute books already which permits two or more adjacent counties to establish a district hospital home for the aged and infirm, but no counties have seen fit yet to consolidate. Avery County is sending its few inmates to the Watauga home, and McDowell is sending its inmates to Rutherford County. There may be other examples where one county sends its poor into another county to be cared for, and it is hoped that the practice will become more prevalent. Opposition is sometimes voiced to the effect that it removes the old people too far from familiar scenes and familiar faces. But it makes little difference whether one is ten miles from home or thirty miles when he becomes accustomed to his new surroundings.

Outdoor Relief. The second phase of poor relief is that which is known as outdoor relief, and which until very recently has meant unsupervised relief. A certain type of paupers, mainly those whose relatives were unable or unwilling to support them, appeared before the county commissioners and asked for temporary relief or perhaps for a regular monthly allowance. The commissioners listened to the appeals and granted or refused aid as their judgment dictated. They usually had no opportunity to investigate these cases, other than to inquire of the neighbors. The neighbors, wishing to be relieved of the burden, would usually report that the case was worthy. Probably, in most

[27] *Public-Local Laws*, 1923, chap. 611.

cases, there has been genuine poverty and sometimes real distress; but the method of dispensing aid has been most unscientific. Furthermore, relief has often been granted to those who have near relatives well able to care for them. A study of poor relief in any county over a period of years would almost certainly reveal great abuses. Some of the most common abuses are as follows: aid denied to some in real need because the seriousness of their condition is not known; aid granted to some who do not need it; cash payments wasted for tobacco or liquor while children need food and clothing; payments in goods furnished by local merchant at his own price and occasionally charged but not furnished at all; allowances continued after the cause of distress has ceased to exist; allowances continued for people who have died since their names were put on the pauper list; cash payments too small to be of any real benefit and thus having only a pauperizing effect; small doles given to numerous voters in doubtful precincts.

A few boards of county commissioners, recognizing the evils of the system, have threatened to abolish outdoor relief entirely and require all persons receiving aid from the county to go to the county home. This might be a pretty effective way of discovering the bona fide paupers, for those who are not in real need will refuse to go to the county home. Hundreds of people whose pride does not prevent them from accepting cash doles from the public treasury are too proud to go to the county home. There seems to be a stigma attached to residence in the county home which is entirely unwarranted. On the other hand, the willingness of great numbers to accept cash contributions suggests that their requests for aid are not always deserving. Nevertheless, it would not be wise to discontinue all outside relief. There are many occasions when it is more humane as well as more economical to grant outside aid than to commit to the county home. This is especially true in the case of old people who have children willing to give them tender care but financially unable to support them, and in the case of dependent widows with minor children. Wherever a home, however humble, can be preserved by a modest grant, it is generally more desirable than to break it up. After all,

outside relief is not an excessive burden on the counties, amounting on the average to less than $2,000 annually.

It is evident that the dispensing of poor relief is likely to be accompanied by a great deal of wastefulness and fraud unless there is careful supervision. The superintendent of public welfare thus can render a useful service, first, by investigating the need of each applicant, and second, by supervising the expenditure of such funds as are granted. Unfortunately, many counties do not have a full-time superintendent of public welfare, and some which do have, have not yielded to him the administration of the poor funds.

Mothers' Aid. In 1923 North Carolina fell in line with other progressive states and enacted a Mothers' Aid law.[28] To be eligible to apply for mothers' aid a woman must be the mother of a child or children under fourteen years of age, a resident of the state of North Carolina for three years, and a resident of the county for one year preceding her application. She must possess sufficient mental, moral, and physical fitness to be capable of maintaining a home for herself and child or children and prevented only by a lack of means. She must be either a widow, or divorced, or deserted and without support.

The maximum allowance cannot exceed fifteen dollars for one child, ten dollars additional for the second child, and five dollars additional for the third child, or any in excess of three. Except under extraordinary circumstances the total amount can not exceed forty dollars per month. For every dollar contributed by the county for mothers' aid the state contributes a like amount.

At the close of the last biennial period, June, 1926, there were 264 mothers receiving aid from this fund to the benefit of 984 children. Seventy-five counties were coöperating, and disbursements for the year ending June 30, 1926, amounted to $48,828.90, half of which was contributed by the state.[29] The county superintendent of public welfare is charged with the administration of the fund, and it is his duty to keep in

[28] *Laws of 1923*, chap. 260.

[29] *Biennial Report (1924-26)*, State Board of Charities and Public Welfare, p. 59.

close touch with the families affected. The social value of mothers' aid of this sort is unquestioned. It often enables a mother to preserve a home for her children and give them a mother's care, while otherwise she would have to surrender them to an orphanage. Efforts are also made to help the mother obtain a supplementary income so that she can maintain an adequate standard of living.

The General Assembly of 1927 increased the annual appropriation for mothers' aid from $25,000 to $50,000. Seventy-five counties were coöperating in August, 1927.

Preventive Relief Work. It is the duty of the superintendent of public welfare not only to administer poor relief through the established channels to those who apply for it, but to search out and render assistance to those who are likely to become public charges later. Many of those who become paupers in old age might be saved that shame if directed into the right channels during their productive years. In this age of keen competition there are many people of low mentality, or even of average mentality, who have never become adjusted. They need guidance and encouragement. Others are handicapped by sickness, or by sickness in their families, or are hampered by dependents. Others are victims of irregular employment. Some are invalids or near invalids. Many are thriftless and intemperate. An energetic welfare superintendent is active in this work of prevention. In one instance a whole neighborhood, which for years had been a nest of poverty and crime, was broken up and the people moved into a new environment, where they have become self-supporting, law-abiding citizens.[30] Injured workmen have been helped to get compensation. Illiterate service-men have been helped to get bonuses. Employment has been secured for the unemployed. In some cases illiterates have been taught to read. In scores of ways potential paupers have been set on the road to self-sufficiency. This kind of service is not apt to be performed by private agencies and will remain undone unless there is an officer whose business it is to discover and remove, if possible, the sources of poverty.

[30] County Government Studies, Department of Rural Social-Economics, University of North Carolina.

Rehabilitation Work:

Another phase of relief is that known as rehabilitation work. Primarily this service is aimed to reach the ex-service men who are or may become disabled. Many who are entitled to hospital treatment at federal expense will be neglected unless there is some one to intercede for them. Many are illiterate and unacquainted with the agencies which exist for their benefit. Rehabilitation means not only hospital treatment where it is needed but the opportunity to learn a trade so that one may become a self-supporting member of society. Much has been done by the welfare officers for others than veterans. Surgical operations have been made available and artificial limbs procured for those who were too poor to pay for their own rehabilitation.

Another important work of the superintendent of public welfare is to help persons discharged from hospitals for the insane, state prisons, or other institutions to secure employment and get re-established in their respective communities. He visits and counsels such persons and keeps an eye on their behavior.

Child Welfare Work:

Enforcement of Child Labor Law. In connection with the protection of children, the superintendent of public welfare has many important duties. Among these duties is that of enforcing the child labor law. In general the law[31] prohibits the employment in industry of children under fourteen years of age, or of children between fourteen and sixteen except during the daytime and for no more than eight hours daily. No child between the ages of fourteen and sixteen may be employed unless supplied with a certificate issued by the superintendent of public welfare authorizing such employment. The superintendent may withhold a certificate if he is not satisfied that the child has attained the minimum age, or if his school record is deficient, or if, upon examination by a physician, it is found that his health might be impaired by employment. A certificate once granted may be revoked if it is discovered that the work is injuring the child's health or morals. It is the

[31] *Consolidated Statutes*, 5031-5035, amended 1927.

duty of the superintendent of public welfare to inspect frequently all places where children are employed, record and report conditions, and initiate prosecutions where violations are in evidence. On the whole, employers seem to be coöperating in upholding the child labor law. Where there are violations it is quite often due to misrepresentation of the child's age by the parents.

Child-Placing and Oversight. An important phase of child welfare work is that of placing dependent and neglected children in good homes. This work is officially in the hands of the Children's Home Society of North Carolina, a private agency, incorporated under the laws of the state and managed by a board of directors.[32]

If destitute children are normal mentally and physically, they may be committed by the judge of the juvenile court to this society. At the receiving home in Greensboro the child is given a thorough examination and corrective treatment if necessary. Efforts are then made to place him in a permanent home of the right sort.

The judge of the juvenile court has the right to commit children directly to temporary or permanent homes. Many of the county superintendents of public welfare use this method of child-placing, except in cases where it seems best for the child to remove him entirely from his old environment. Children placed within a county by either method are supposed to be visited frequently by the welfare superintendent and otherwise kept under surveillance. It is incumbent upon society to see that these little ones, denied the protection and love of parents, are saved from exploitation.

The Juvenile Court. In 1919 there was established in each county of the state a juvenile court as a part of the superior court, and with the clerk of the superior court as judge.[33] It has exclusive original jurisdiction of all cases involving delinquent, neglected, or dependent children under sixteen years of age. Unless a court order has been issued to the contrary, or unless the child has been committed to a state institution, jurisdiction once obtained continues during the minority of the child.[34]

[32] Odum and Willard, *op. cit.*, p. 196.
[33] *Laws of 1919*, chap. 97.
[34] *Consolidated Statutes*, 5039.

Sessions of the court may be held at such times and in such places within the county as the judge may from time to time determine. These sessions may not legally be held in conjunction with any other business of the superior court; neither may children's cases be heard at the same time as those against adults. The public is excluded from the hearings. The law requires that the court shall maintain a full and complete record of all cases brought before it, to be known as the Juvenile Record. In the discretion of the judge this record may be withheld from indiscriminate public inspection. The court has as full powers of summons and inquisition as any other court.

If, after investigation or trial, the court is satisfied that the child is in need of the care, protection, or discipline of the state, it may so adjudicate. Thereupon it may resort to any one of several courses of action:[35] (*a*) It may place the child on probation; (*b*) It may commit the child to the custody of a relative or other fit person of good moral character, subject to the supervision of the probation officer and the further orders of the court; (*c*) It may commit the child to the custody of the State Board of Charities and Public Welfare, to be placed by such board in a suitable family home; (*d*) It may commit the child to a suitable institution; (*e*) If a child of fourteen years of age is charged with a felony for which the punishment cannot be more than ten years in prison, his case must be investigated by the probation officer and the judge of the juvenile court or, if the latter thinks best, brought to the attention of the judge of the superior court. If this second course is to be pursued the child must be held in custody or bound to the next term of the superior court.

No child may legally be placed in any penal institution, jail, lockup, or other place where he can come into contact with adult prisoners.[36]

The legislature of 1923 amended the juvenile court law making it mandatory that every city in the state having a population of ten thousand or more by the census of 1920 maintain a separate juvenile court.[37] The following cities

[35] *Consolidated Statutes*, 5047.
[36] *Consolidated Statutes*, 5048.
[37] *Laws of 1923*, chap. 193.

have separate juvenile courts with part-time judges: Charlotte, Durham, Hickory, High Point, Raleigh, Rocky Mount, Wilmington, and Winston-Salem. By special arrangement with the county commissioners, joint city and county courts are held in Gastonia, Goldsboro, Greensboro, New Bern, Salisbury, and Wilson. The clerk of the court is judge of these joint city and county courts. Asheville and Buncombe county have a joint court with a whole-time juvenile court judge, a girls' referee, a boys' probation officer, and a part-time psychiatrist, who has charge of the mental hygiene clinic.[38]

Juvenile delinquency is a very serious problem in the state, and the juvenile courts were established none too soon. Reports from seventy-seven counties show that 7,423 cases were handled by the juvenile courts of the state from June 30, 1924, to June 30, 1926. As a result, 2,801 children were placed on probation, 1,036 were committed to institutions, and 3,586 were handled in various other ways.[39] Delinquent boys of today, unless arrested in their waywardness and directed into paths of usefulness and honor, become the criminals of tomorrow. If even a fraction of the thousands who come into the juvenile court are checked in their delinquency and through kindly counsel and guidance are established in the habits of industry and character, the saving to society is immeasurable. The juvenile court is only one part of the machinery for saving the delinquent youth, but it is an indispensable part. Juvenile cases cannot be handled in the same manner as adult cases; they require sympathy, tact, privacy, and most of all, time. Juvenile delinquency is almost always the result of abnormal conditions which cannot be discovered and corrected by *ex parte* proceedings. Oftentimes a child's environment must be changed as well as his state of mind. Punishment in itself changes neither. Discipline must be accompanied by, if not replaced by, positive efforts to remove the causes of delinquency and to direct the offender into a wholesome environment. Thus the most important factor in a juvenile court is the probation officer.

Although the juvenile courts in the state have rendered

[38] *Biennial Report (1924-1926) of the State Board*, pp. 76-78. [39] *Ibid.*, p. 78.

a useful service, their usefulness could be greatly increased if they were better understood and more loyally supported. Parents and citizens have sometimes been more eager to embarrass the court than to save the delinquent boy or girl. Many of the courts have no regular probation officer; few have trained probation officers. The judges, elected as clerks of the superior court, have no special fitness for juvenile work. Most of them, however, are men of discretion and are doing surprisingly well. The worst failures are those who have no understanding of youth and too little sense to take counsel from those who do have. The worst example of malpractice that the writer has noticed was in a county where the judge of the juvenile court and the welfare superintendent were political enemies and let their politics outweigh their discretion. The judge conspired with criminal lawyers to embarrass the welfare superintendent without giving any thought to the child affected.

The juvenile courts have also been handicapped by the lack of institutions to which delinquents may be committed. The schools at Concord and Samarcand are all the time filled to capacity. No doubt there have been instances when boys and girls have been sent to these institutions unnecessarily, but in most cases the action is justified and desirable. A change of environment is often the most effective means of reformation that can be adopted, and especially if a period of probation has been tried without success. In county after county the writer has found the same complaint; welfare superintendents and judges find themselves helpless to enforce their decrees because there is no punishment that can be imposed if the delinquent youth breaks faith with them. A few counties have assured themselves of accommodations at Stonewall Jackson Training School by building cottages there for the use of their own boys. This is a satisfactory solution for those counties that are financially able to undertake it. It might be desirable in some cases for two or more counties to join in such an enterprise. Another solution might be for several counties to unite in building and maintaining a district home for juvenile delinquents.

Probation Work:

The judge of the juvenile court in each county is required[40] to appoint one or more suitable persons as probation officers, the county superintendent of public welfare to be the chief one. As a matter of fact, except in a few of the larger counties, no additional probation officers have been appointed. The judge may discharge any probation officer for cause, provided no probation officer may be appointed or discharged without the approval of the State Board of Charities and Public Welfare.

The importance of the probation officer's work in the treatment of juvenile delinquency has already been pointed out. In brief, it is the duty[41] of the probation officer to investigate thoroughly every case coming before the juvenile court and to take charge of any child before or after the trial, if so directed by the court. Any person released on probation is required to accept instructions from, and be responsible to, the probation officer. It is the latter's duty to keep informed concerning the conduct and condition of probationers, make monthly reports to the court, and in every suitable way encourage and assist them to "make good." To be a successful probation officer one must possess an abundance of patience and tact and the ability to win the confidence and admiration of the probationers.

Probation work is not limited to juvenile delinquents. Recorders and judges of the superior court often place adult misdemeanants, especially first offenders, on probation under the direction of the county superintendent of public welfare.

An alert superintendent of public welfare handles unofficially a great many cases of minor delinquency, dependency, and neglect. During the last two years reports from fifty-five counties show 7,987 cases of this sort. Thus a great amount of preventive work is done with incalculable savings in money and in humanity.

PENAL AND CORRECTIONAL INSTITUTIONS

Another important phase of public welfare with which the superintendent is charged is that of institutional in-

[40] *Consolidated Statutes*, 5049. [41] *Ibid.*, 5051.

spection and oversight. This service extends to both public and private institutions. The county institutions of a public nature include the jails and prison camps, the county homes, and, in a few counties, specialized institutions such as the Mecklenburg Industrial Home for Women. The private institutions which are subject to the inspection of the superintendent of public welfare are mainly children's homes to which dependent children of the county have been committed.

The county home has been fully discussed in connection with the subject of poor relief. It is to the penal and correctional institutions that we shall therefore turn our attention.

The County Jail:

Of all our penal institutions the county jail is probably the most guilty of evil and unscientific practices and, until very recently, the most neglected by investigators. It is important because it is so universal and because it influences so many individuals. Practically all prisoners experience their first confinement in a county or municipal jail.

Every county in North Carolina has a county jail of some description. Some are old and dilapidated, unsanitary and unsafe; others are modern buildings, clean, comfortable, and secure. According to the latest report of the State Board of Charities and Public Welfare, twenty-three new jails have been occupied during the last two years, and forty-one counties have made material improvements.[42] At the time of the report five county jails were under construction and other counties were considering building. The same awakened sense of humaneness which has prompted the construction of new and more adequate county homes has manifested itself in the demand for better jails. The legal requirements touching jails are: (*a*) that they be "so heated by furnaces, stoves, or otherwise, as to render them warm and comfortable," and (*b*) that they "be provided with at least five separate and suitable apartments, one for the confinement of white male criminals; one for white female criminals; one for colored male criminals; one for colored

[42] *Biennial Report (1924-1926)*, p. 35.

female criminals; and one for other prisoners."[43] Not all of the jails satisfy even these two requirements, and those that do have little else to commend them.

Some of the evils that exist in the county jails are the following: (*a*) Idleness, because of no facilities to work the prisoners; (*b*) Congestion, with three or four sleeping in one cell; (*c*) Solitary confinement, when there is only one prisoner in the jail or in a particular apartment of the jail; (*d*) Exposure to disease. So many of the inmates have infectious diseases that the others are in danger of contracting them; (*e*) Vermin and other filth; (*f*) Lack of suitable food. The writer has never heard any complaint that there was not sufficient food. The statute[44] requires that each prisoner receive a pound of meat a day, which appears like an unwise requirement considering the fact that the prisoners are in idleness; (*g*) Lack of sunshine and fresh air; (*h*) Lack of any proper mental stimulus; (*i*) In some instances jails built overlooking the streets, thus enabling the prisoners to converse with pedestrians and acquire from them hack saws and firearms; (*j*) Too great indulgence on the part of the jailer. In one county the prisoners were feasting on eggs, pastries, watermelons, and other luxuries.[45]

Not all of these evils exist in any one jail, but probably no jail is free from all of them. The very nature of the jail makes some of them almost inevitable.

The Jailer. The sheriff or one of his deputies serves as jailer, more often a deputy.[46] The jailer's wife usually serves as matron. The jailers are usually rough but kind-hearted fellows who treat the prisoners decently. Sometimes the prisoners develop a real affection for the jailer. Most of the inmates in a county jail are serving time for comparatively minor offenses or are awaiting trial. Not often are they desperate characters, and the jailer is likely to give them some liberties. In one county a convict was serving as janitor of the courthouse, and the women prisoners are almost always drafted to help with the cooking or cleaning.

It is not safe, however, for the jailer to take chances.

[43] *Consolidated Statutes*, 1318-1319. [44] *Consolidated Statutes*, 1346.

[45] County Government Studies, Department of Rural Social-Economics, University of North Carolina.

[46] *Consolidated Statutes*, 3944.

A prisoner in his craving for freedom will sometimes resort to extreme measures. In one county the jailer carelessly stepped inside the run-around without first locking the prisoners into their respective cells. A powerful negro jumped upon him, wrested his revolver from him, placed it against the jailer's temple, and pulled the trigger. Fortunately, the hammer struck an empty chamber, and before the negro could pull the trigger again, the jailer had pushed the weapon aside. The jailer overcame his adversary, but the other prisoners escaped.[47]

The law[48] provides that jailers shall receive for feeding prisoners not more than fifty cents per day unless the county commissioners deem it expedient to increase this rate, and then the increase shall not exceed 50 per cent on the above sum. As a matter of practice[49] the rates vary from fifty cents to one dollar and twenty-five cents. The law[50] also states that the United States shall pay the same rates for federal prisoners as paid by the counties, but this rule is not observed. Federal rates vary from forty-five cents to one dollar.[51] The counties also pay a turnkey fee of thirty cents whenever a prisoner is admitted or discharged.[52] This latter fee is a survival of the old English practice by which prisoners paid the jailer a bribe to leave the cell door unlocked. At least, that is the tradition.

The fees are paid to the sheriff, and if he does not serve as jailer, he in turn pays the person whom he employs as jailer. Ordinarily, he gives him the fees and lets him buy the supplies, though in some instances the sheriff buys the supplies himself and pays the jailer a salary. The jailer is usually deputized to serve process and thereby collects a few additional fees.

Wastefulness of Jails. A census of the county jails on April 10, 1925, showed a jail population of 766 in seventy-six jails. If the number in the remaining twenty-four jails was in proportion, there were approximately one thousand persons

[47] County Government Studies, Department of Rural Social-Economics, University of North Carolina.

[48] *Consolidated Statutes*, 3919.

[49] By virtue of special acts.

[50] *Consolidated Statutes*, 1349.

[51] *Biennial Report* (*1924-26*), State Board of Charities and Public Welfare, p. 38.

[52] *Consolidated Statutes*, 3908.

in the county jails on that date. This is an average of ten. Of course, the number would have been much larger were it not for the fact that in many of the counties the able-bodied men were in road camps. Even so, it is a great economic waste to maintain a hundred jails for a thousand inmates. A jailer must be employed, a jail provided, equipped, and heated, and about as much overhead expense incurred for five or six prisoners as for fifty or sixty. The building itself, if it meets legal specifications, represents a large investment. A modern jail with a capacity of forty costs about $60,000 and with a smaller capacity the reduction in cost would not be proportionate. It is right for the state to demand modern, sanitary jails, but there is no need for a hundred of them. It is an unnecessary burden on the counties. One jail should serve three or four counties. It is true that a jail may become pretty well filled just before court convenes, but at that time another county is completing a session of court and emptying its jail.

The overhead expense involved in maintaining a jail with a small number of inmates is not the only element of waste. The prisoners in a county jail must be kept in idleness because there is no opportunity to give them work. The unit is too small to permit workshops or other means of making the prisoners self-supporting. The law states that

> Every person committed by lawful authority, for any criminal offense or misdemeanor, shall bear all reasonable charges for guarding and carrying him to jail, and also for his support therein until released; and all the estate which such person possessed at the time of committing the offense shall be subjected to the payment of such charges and other prison fees, in preference to all other debts and demands. If there is no visible estate whereon to levy such fees and charges, the amount shall be paid by the county.[53]

There is rarely any "visible estate." Occasionally jail fees are collected from persons who are held in jail before trial, and at the trial are excused upon payment of costs, or a fine and costs. Penal institutions should be self-supporting, or at least partially so. A jail can never provide facilities

[53] *Consolidated Statutes*, 1347.

for working prisoners because it is too small a unit. The prisoners can not even be worked on the roads profitably, except in fairly large units. Already the smaller counties are contracting their able-bodied male prisoners to the larger counties for road work, and the arrangement seems to be mutually profitable. It would be even more profitable for the small counties if they did not each have to maintain a jail for the few women and disabled men who remain. Sound economy demands district jails for prisoners as well as district homes for the paupers.

There are grounds other than economy which demand the elimination of the county jail as a penal institution. It is purely a punitive institution; it has neither the facilities nor the personnel to make it correctional. Rarely is there a sheriff or jailer who knows much if anything about criminology. All inmates are alike to him whatever their crime, their motive, their background, their mentality. Even if the jailer were enlightened in the science of criminology he could do nothing, because the jail is not constructed or equipped to permit differentiation. There can be no sensible treatment of crime until criminals are placed in institutions of sufficient size to permit specialization in treatment. This does not mean milder punishment; it ought to mean, in many cases, more severe punishment. The county jail is often a breeding place of crime; it rarely reforms an individual. Sometimes the jails are so warm, the food so plentiful, and the discipline so mild that vagrants find them a desirable place to spend the winter and maneuver to get a light sentence each autumn. This is more common in the North than in the South for obvious reasons. While the jail may appeal to hoboes who are not sensitive about dirt, it is a torture to people of fine sensibilities. The vermin and filth, the constant danger of contracting disease, the association of vulgar companions, the forced idleness, and the mental starvation often drive the more intelligent into insanity or make them confirmed criminals.

Even though the jail were discontinued for the use of convicts, the county would still need a lockup for the detention of persons awaiting trial and for use during trial. Such a lockup should be a part of the courthouse. Two or

three comfortable but well barricaded rooms would be sufficient. It is assumed that persons held for several weeks because of their inability to secure bail would be committed to the district jails. The local detention quarters would be used also as a place for temporary confinement following arrest.

This arrangement is not urged for all counties, but only for those in which the average jail population (exclusive of those serving sentence) is too small to warrant a full-time jailer and an expensive jail. As previously suggested, those who have been tried and convicted should be sentenced to larger institutions, where there can be differentiation in treatment, as on the state farm for misdemeanants in Indiana.

Prison Camps and Chain Gangs:

The board of county commissioners or the county highway commission has the power[54] to provide for the employment on the highways or public works in the county of all persons condemned to imprisonment with hard labor and not sent to the penitentiary. In imposing sentence a judge may specify that the labor is to be performed on the highways of a particular county.

The counties with a small number of able-bodied convicts do not find it profitable to operate a convict labor force; so they arrange with the larger counties to take their convicts. Usually the larger county is willing to pay the court costs for the privilege of getting the additional labor. On June 30, 1926, there were forty-six counties and one road district working convicts on the public highways. There were sixty-eight camps, and the number of prisoners varied from 2,200 to 2,400 per month.[55]

The majority of the prison camps or chain gangs are temporary or movable camps. In most of these camps, the convicts are lodged in iron cages, which are mounted on wheels and moved from one location to another as the roads of a county are worked. If the cages were kept per-

[54] *Consolidated Statutes*, 1297, sec. 31.

[55] *Biennial Report (1924-26)*, State Board of Charities and Public Welfare, p. 41.

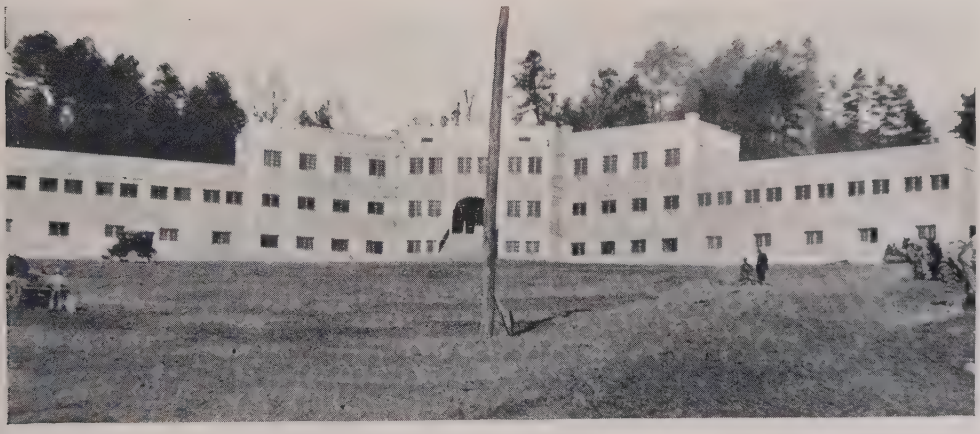
fectly clean, and not more than three or four men were confined in each, they might be justified. But such is not the case. Eight or ten men are required to sleep in one cage; if it is a stormy night the curtains must be let down, making the air inside insufferable. The camps are pitched along the roadside, where the water supply is limited, so that the men, after working in the dust or mud all day, must go to bed without bathing. Imagine eight or ten men with dirty, damp clothing sleeping in a poorly ventilated cage about twelve feet long, six feet wide, and six feet high. There can be no toilet facilities except of an improvised sort. Some of the men are likely to be diseased. A man of any sensibilities would rather work a month at hard labor than spend one night in such an iniquitous trap.

So far as the work goes the men are much happier and healthier than they would be confined in the jail. The food is not always all that it ought to be, but there is an abundance such as it is. The discipline varies in the different camps, but too often the guards are men of low mentality, vulgar, unreasonable, and unfit to be in a position of authority over other men. No doubt, there is an occasional convict who is troublesome, but oftentimes the guards invite the hostility of the workers through their overbearing attitude. In some of the camps, within recent years, there have been cases of unbelievable cruelty; in several instances convicts have died as a result of cruel and unusual punishments.

These outrages have developed a public opinion unfavorable to the further employment of convicts on the highways. Of course, if these abuses cannot be stopped, it would be better to abolish the camps, but that ought not to be necessary. Crime is increasing; the jails have no facilities for working the prisoners inside; the road work needs to be done; it suits convict labor; and it ought to be possible to overcome the evils and continue the utilization of convict labor in this way. The fact that some counties are working out a satisfactory solution offers hope for the others.

One promising avenue of improvement is the permanent camp. Bertie, Buncombe, Durham, Edgecombe, Alamance, Guilford, Rockingham, Lenoir, New Hanover, Vance, Henderson, Craven, Union, and Wilson counties and the Rocky

TRANSYLVANIA PRISON CAMP



BUNCOMBE COUNTY STOCKADE

Mount Road District have already constructed permanent quarters for the road forces. This involves some initial expense but is a distinct advantage over the movable camps. The men can be transported in auto trucks ten or fifteen miles morning and night with comparative ease. At the permanent quarters there can be shower baths, clean, comfortable bunks to sleep in, kitchen conveniences, and an adequate arrangement for garbage disposal. There can be repair shops to keep the men occupied on rainy days. The buildings can be built in the form of a quadrangle opening into a central court and around the whole group of buildings a wall or barbed wire fence built. In Alamance County the prison camp, or stockade as it is called, follows this description. While it is impossible to make a stockade as secure as a jail, that is no great fault. It is less serious to lose an occasional convict than to subject the entire camp to a merciless and unreasonable discipline. The incorrigible criminal should be sent to the penitentiary; the convict who is capable of redemption should be encouraged in the development of self-respect and self-control. In other words, the application of the honor system might be greatly extended. It is encouraging to note experiments in that direction in Edgecombe and Moore counties. With the elimination of stripes, feeble-minded guards, and flogging, and in substitution thereof an honor system and commutation of sentence for good behavior, it is believed that the operating costs of a prison camp will be greatly reduced and the quality of work improved. Even more important, it ought to help in the reformation of the criminal better than the present system.

An experiment in Vermont by which the inmates of the jail are allowed to work for private employers is described by the sheriff as follows:

> The men are all compelled to work at laborer's work. No matter what his trade or profession has been, he has to do the work of a common laborer. The reason for this is, that this is a strong union center, but in this way we have had the support of the various labor unions. The pay for a laborer in this section is $2.00 per day. Under our system the penal board has taken $1.00 as the share for the state, and has allowed the men to have the balance earned. During the last six years we have worked over

1,200 men outside the jail. The men start from the jail before seven o'clock in the morning, take their dinner pails in hand and work sometimes two or three in a place, and very often alone, scattered over a radius of twelve miles, and during this time we have never lost a man. During the first three years we had three men try to escape, but during the last three years none have made the attempt. These men go to their work dressed like the ordinary laborer and no one not knowing them would for a minute suspect them to be prisoners.

The jail office has become an employment bureau. We have had many a man serving a sentence of from three to six months or a year support his family and keep them from charity, while serving sentence.

No prisoner is denied the privilege in the evening of going to the news-stand to buy the daily paper, or to the tobacco store to buy his tobacco or to any other store to purchase what he needs.

We know we have seen some men start with a new purpose in life, going out to try and redeem the past. The locking of a cell door is an unknown quantity with us.[56]

Possibly it may be a long time before this degree of freedom will be granted in North Carolina. Probably it can never be granted to more than one class of prisoners. It certainly ought not to be extended to desperate criminals or to the feeble-minded. The honor system should, however, be given a fair trial. Wherever it can be applied, in a greater or less degree, it reduces administrative costs and, more important, it aids in the reformation of the criminal. If wages are allowed, as in Vermont, the prisoner is able to support his family while serving sentence, thus relieving the county or private individuals of that burden.

Working prisoners on the public highways is one of the most logical and practical means of utilizing convict labor; but the chain gang, as we have known it in North Carolina, has been unscientific and unprofitable. The fault must lie in the methods of administration that have been employed. The classification of prisoners, with the mentally deficient and the desperate committed to state institutions; the substitution of permanent stockades for the inhuman and unsanitary camps; and the use of the honor system instead of

[56] Queen, *Passing of the County Jail*, p. 24.

the tyranny of stupid guards, will go a long way toward efficiency.

The first step toward improvement is, of course, compliance with the law that we already have. One statute provides that the "county authorities have power to enact all needful rules and regulations for the successful working of convicts upon the public roads."[57] Some counties have not even gone to the trouble of adopting rules. Without a code of rules and regulations the road superintendent renders himself liable to indictment whenever he inflicts punishment upon a convict. The State Board has drafted a body of rules[58] for the use of superintendents of convict forces, which have been accepted by some counties and ought to be accepted by all. These principles are not based on sentimentalism but do attempt to safeguard the health of the prisoner and also those rights that belong to all human beings.

Houses of Correction:

The board of county commissioners has the power to establish, when it deems necessary, such county institutions as houses of correction, training schools for juvenile delinquents, or other institutions of a specialized character. The board has the authority to equip such institutions with suitable buildings and workshops for the "safe-keeping, correcting, governing, and employing of offenders legally committed thereto."[59] It has the power to make such rules and regulations governing the institution as it may deem proper, and to appoint a board of directors and a manager. The manager has immediate supervision over the institution and the persons committed thereto. The directors superintend and direct the manager, visit the institution periodically and see that the rules and regulations are enforced and that the inmates are properly cared for. The manager is required to make monthly reports to the directors, and the latter are required to make quarterly reports to the county commissioners.

Only such persons are received at these institutions as

[57] *Consolidated Statutes*, 1361.
[58] *Biennial Report (1924-1926)*, State Board of Charities and Public Welfare, pp. 42-43.
[59] *Consolidated Statutes*, 1365.

are committed by the courts or by magistrates possessing the committing power. The type of person committed depends, of course, on the type of institution. One kind would receive juvenile delinquents, another the women offenders, and another the mentally defective. As a matter of fact, very few specialized institutions except those financed by the state have been established. Among the few are the Mecklenburg Industrial Home for Women, the Buncombe County Reformatory, the Buncombe County Children's Home, the Wake County Detention Home, the Pasquotank County Detention Home, and the Forsyth County Juvenile Reformatory. There are numerous county hospitals and tubercular sanatoria which will be discussed later. There are far too few correctional and reformatory institutions. The jails and the county homes have had to be receptacles for all sorts of humanity. The chances against local reformatories are almost insuperable, however. It would be far better for these institutions to be provided by the state.

THE PROGRESS OF PUBLIC WELFARE

County Councils of Social Agencies:

Various plans of organization have been followed by the county superintendents of public welfare in their efforts to correlate the work of existing social agencies and organizations. In eleven counties the numerous organizations interested in social work are coöperating through the medium of a county council. As a result of these organizations, duplication of effort has been avoided, keener interest aroused, and a spirit of understanding and mutual helpfulness developed. These counties are Anson, Cleveland, Cumberland, Davie, Durham, Johnston, Mecklenburg, New Hanover, Stanly, Vance, and Wake.

Organization is difficult in the rural counties because of the lack of definitely organized groups to be used as a basis. However, by use of the consolidated schools, parent-teacher associations, farm-life clubs, and church organizations, a number of counties have been able to work out programs for rural organizations that are proving to be effective. Several counties have township committees, representing all local agencies, and they meet with the superintendent of public

welfare to discuss local problems and serve as township representatives at county-wide meetings. Other counties disregard township lines and use the logical community centers as a basis for rural organization. The consolidated school is gradually becoming the community center for the rural areas.

Every organized county in the state reports coöperation between the churches and the department of public welfare. Quite often the superintendent of public welfare receives valuable assistance from the county ministerial associations, the Sunday schools, and the church auxiliaries. Frequently the churches contribute money or clothing to the welfare department to supplement what is appropriated by the county commissioners.

The biennial report of the State Board of Charities and Public Welfare cites as flourishing county organizations the Moore County Health and Welfare Association and the Davie County Council and Associated Charities.[60]

The Prospect:

The rank and file of the people of North Carolina do not understand or appreciate the public welfare service. Some dismiss it with the statement that it is a "new-fangled" scheme that is costly and unnecessary. Others condemn it as paternalism or sentimentalism. Both groups recognize it as something imposed on the county from the state capitol and not a thing of local origin springing out of local conditions. It is unfortunately true that it was imposed on the counties from above, or at least on some counties. The other arguments are too fallacious to demand an answer. Public welfare is the antithesis of paternalism; its primary objective is to prevent the developing of conditions that will demand paternalism. Nothing could be more paternalistic or more pauperizing than the indiscriminate distribution of poor relief which has so long characterized the administration of the county poor fund. The second major aim of public welfare is to coördinate the work of the various relief agencies. Disease and poverty and crime are interrelated;

[60] *Biennial Report (1924-1926)*, State Board of Charities and Public Welfare, pp. 72-75.

one is often the result of another. These problems must be studied together, and agencies which deal with them must be coördinated. The county superintendent of public welfare supplies for the first time, in the rural areas at least, an instrument of coördination.

The benefits of welfare work are not always tangible; they cannot be measured in economic terms; they are not immediate. For this reason it is not easy to convince the layman of its value. He has not been trained to fathom the causes of unwholesome social conditions or to understand social reactions. Even so, there is much that a welfare officer can do and does do that is tangible, and on that score his work will be appraised and justified. Each year that the work is continued in a county, and wisely conducted, the number of defenders increases. In a few years more the department will probably be as firmly established as the schools.

PUBLIC HEALTH

County Health Departments:

There is one county service in which no state excels North Carolina, and that is the public health service. For laying the foundations of this great work the state is indebted to Drs. R. H. Lewis and W. S. Rankin. The state and counties now are spending each year more than a million dollars in protecting and promoting public health, and it is money wisely invested.

The outstanding feature of the public health work in recent years has been the development of a system of county health departments manned with whole-time doctors and nurses and adequately supported financially. The development of this service has been in progress now for sixteen years. The first whole-time county health unit to be organized in the United States was established in Guilford County, June 1, 1911.

There are now thirty-eight counties in North Carolina maintaining whole-time health departments. There are, in addition, five city health departments maintained independently of the county units. The personnel of the departments varies from one physician as health officer, with

no assistance other than an office clerk, to a staff consisting of health officer, assistant physicians, dentist, sanitary inspectors, and a corps of nurses. The budgets vary from $4,500 to $65,000. Thirty-seven of the county units are operated in coöperation with the State Board of Health and receive financial assistance to the extent of $2,500 annually from the state. Guilford County and the five city departments of Charlotte, Greensboro, Winston-Salem, Asheville, and Rocky Mount are more or less independent of the State Board. The coöperating counties are Beaufort, Bertie, Bladen, Brunswick, Buncombe, Cabarrus, Carteret, Columbus, Craven, Cumberland, Davidson, Durham, Edgecombe, Forsyth, Granville, Halifax, Henderson, Johnston, Lenoir, Mecklenburg, Nash, New Hanover, Northampton, Pamlico, Pitt, Richmond, Robeson, Rowan, Rutherford, Sampson, Surry, Transylvania, Vance, Wake, Wayne, Wilkes, and Wilson.[61]

The State Board of Health contributes the sum of $2,500 annually to any county which establishes and maintains a full-time health department and which itself expends at least an equal sum. However, only $1,000 of the state's appropriation is contributed unconditionally, the remainder being conditioned on the ability of the county health department to produce in cost items of work the equivalent of the total expenditures of the department. To arrive at this figure every item of work is tabulated and given a "cost equivalent" value. There is a keen and wholesome competition among the several county health departments to attain the highest rating in this respect.

The relation of the state to the county health departments is purely coöperative. The former has tried to avoid a policy that might be criticized either as paternalistic or autocratic. Each coöperating county is free to choose its own health officer, to perfect its own organization, and control its own activities. The health officer is chosen by the county board of health, which consists of the chairman of the board of county commissioners, the county superintendent of schools, the mayor of the county-seat town, and two

[61] *The Health Bulletin*, May, 1926, p. 10.

practicing physicians of the county. The health officer chooses his own assistants.[62]

The functions of the State Board of Health in its relation with a coöperating county health department are: (*a*) Furnish record forms, report forms, and available literature; (*b*) Visit each county health department at regular intervals for conference; (*c*) Instruct the local staff in making reports; (*d*) Offer assistance in planning and developing general and special units of work, demonstrations, exhibits, clinics, etc.; (*e*) Attend meetings of local boards of health and county medical societies; (*f*) Receive and examine monthly reports from the county health departments; and (*g*) Prepare and distribute itemized quarterly statements showing the rating of each coöperating county.[63]

The benefits of the public health work are incalculable. The eradication of hookworm and malaria, the assault on tuberculosis and typhoid, the more effective control of communicable diseases, the reduction in the infant and maternal death rates, the sanitary inspection, the examination, vaccination, and corrective treatment of thousands of school children, and the numerous clinics of various sorts are a few of the major results of the public health campaign.

Despite the fact that the public health service has saved untold suffering and thousands of lives and huge sums that would otherwise have been spent for doctors' bills, it has not met with universal approval and support. On the contrary, it has met constant and vigorous resistance. The battle against ignorance and superstition has been more difficult than the battle against typhoid and malaria. A few years ago health officers were driven away with shotguns when they attempted to vaccinate the children of some illiterate households. But wherever the health work has continued for a few years in a county, that sort of resistance has disappeared, and the ignorant people who fought it at the start have become its stanchest defenders. Unbelievable as it may appear, the health work has sometimes met the opposition of physicians, that is, of two kinds of physicians. It has been openly opposed by some of the old, ill-trained doctors who

[62] *Consolidated Statutes*, 7064-7069.
[63] *The Health Bulletin*, November, 1924, p. 16.

were licensed upon a much less acceptable basis than obtains today. It has also been opposed in a more subtle way by some doctors who have felt that the public health work would injure their private practice. On the whole, however, the work has been loyally supported by the medical profession.

County Physician:

If there is a full-time county health officer, he must also perform the duties of county physician; otherwise the county board of health is required to elect biennially a county physician.[64] If this board fails to make such appointment, it is the duty of the secretary of the State Board of Health to do so. The fees fixed for the services of the county physician must be approved by the board of county commissioners.[65]

The duties of the county physician, in case he is not a full-time health officer, are

> . . . to make the medico-legal post-mortem examinations for the coroner's inquests, to make examination of lunatics for commitment, to render professional service to the sick inmates of the convict camp, jail, and county home, upon request of the superintendent or the keeper of these institutions, and to determine the nature of any particular disease, upon the request of the quarantine or deputy quarantine officer.[66]

If there is a county health officer, he may be, and usually is, the county quarantine officer. Otherwise the county board of health is required to appoint quadrennially a quarantine officer, and it usually gives these additional duties to the county physician. The compensation of the quarantine officer is fixed by statute and depends on the size of the county.[67]

County Hospitals:

North Carolina has a law which permits the people of a county or township to establish and maintain through taxation a public hospital.[68] Three general hospitals have been so established, and a fourth one has been deeded in trust to a

[64] *Consolidated Statutes*, 7067. [65] McCullus *v.* Commissioners, 158 N. C. 75.
[66] *Consolidated Statutes*, 7069. [67] *Ibid.*, 7147-7150. [68] *Ibid.*, 7255.

county. Several other hospitals receive some county support and in return treat charity patients. Brief mention should be made of these institutions.[69]

In 1922 a hospital was built in Shelby Township, Cleveland County, by virtue of a bond issue of $100,000 approved by the voters of that township. A considerable part of the wealth of the county is in Shelby Township, and the hospital is run practically as a county hospital.

In 1925 an excellent private hospital in Rutherfordton, Rutherford County, was deeded in trust to the county. The two doctors who were the owners received a salary but no profits. No patients from the county are ever to be excluded for lack of means.

In 1926 a general hospital was opened at Henderson, Vance County, for the care of charity patients. It has facilities for receiving twelve white and thirteen negro patients. The county home was converted into a hospital.

Early in 1928 a general county hospital was dedicated in Waynesville, Haywood County, the first to be erected as a result of a county-wide bond issue.

The following private or community hospitals receive some support from the county, though in most cases the appropriation is small: Ellen Fitzgerald Hospital, Monroe, Union County; Presbyterian Hospital, Charlotte, Mecklenburg County; Grace Hospital, Morganton, Burke County; St. Leo's Hospital, Greensboro, Guilford County; The Jubilee Hospital (colored), Henderson, Vance County; Watts Hospital, Durham, Durham County; Anson Sanatorium, Wadesboro, Anson County; Roanoke Rapids Hospital, Roanoke Rapids, Halifax County; Marion General Hospital, Marion, McDowell County; James Walker Memorial Hospital, Wilmington, New Hanover County; Goldsboro Hospital, Goldsboro, Wayne County; Lincoln Hospital (colored), Durham, Durham County; Gastonia Colored Hospital, Gastonia, Gaston County; and The Community Hospital (colored), Wilmington, New Hanover County.

Forty-nine counties in the state have no hospital at all, public or private, and the state as a whole ranks very low in hospital facilities. It stands fortieth in the list of states when

[69] Massey, *A Study of County Supported Hospitals in North Carolina.*

ranked on the basis of hospital beds. The average for the United States in 1925 was one general hospital bed for every 291 people. The average for North Carolina that year was one bed for 517 people. This deficiency becomes rather appalling when considered in the light of a statement made by Dr. W. S. Rankin, in which he points out that the average county in the state has at all times 750 sick people, and of these seventy-five are in serious need of hospital care.[70]

It is expected, however, that the hospital facilities of the state will improve rapidly, as a result of the generous provisions made for hospitalization work by the Duke Endowment. The Endowment gives to any public hospital in North Carolina complying with certain regulations, one dollar per day for each charity patient treated. It also helps the coöperating hospitals in the purchase of equipment and supplies.

County Tubercular Sanatoria:

In 1925 there were 2,750 deaths from tuberculosis of all forms in North Carolina. Doctors agree that there should be at least one bed available for civilian use in some tuberculosis sanatorium or hospital for every tuberculosis death. On this basis the state has less than half enough beds. "North Carolina is credited," says *The Sanatorium Sun*, "with 2,482 beds, but 1,081 of these beds are for federal patients and are not available for civilians." The State Sanatorium has a capacity of about 450, but forty-eight of the beds are for prisoners and fifty are for children. Eight counties have tubercular sanatoria with a total capacity of 333. The county institutions and the capacity of each are given below: Forsyth County Tubercular Sanatorium, established in 1916 at Winston-Salem, thirty-two beds; Edgecombe County Tubercular Sanatorium, built on the county home farm near Tarboro in 1924, thirty beds; Guilford County Tubercular Sanatorium, built in 1923 near Jamestown, seventy-five beds; Halifax County Tubercular Sanatorium at Halifax, opened in 1925, twenty beds; Mecklenburg County Tubercular Sanatorium, built in 1926 at Huntersville, one hundred and twenty beds; Wilmington Red Cross Sanatorium built

[70] Massey, *op. cit.*

in Wilmington, New Hanover County, in 1912 from donations. This is a joint city and county institution. It has thirty beds. Burke County has a ten-bed sanatorium and Vance County is constructing one of the same size. The Moore County Home has facilities for the care of six tubercular patients.[71]

Any county has the authority to establish and maintain a tubercular sanatorium by virtue of an act passed in 1917. Such institutions are under the control of a board of managers chosen by the county commissioners.[72]

[71] Massey, *op. cit.*, and *The Sanatorium Sun*, April 1, 1927.
[72] *Laws of 1917*, chap. 99, amended 1919, chap. 159. See *Consolidated Statutes*, 7279-7284.

Chapter XI

MINOR OFFICERS OF THE COUNTY

THE CORONER

History of the Office:

The coroner ranks next to the sheriff in the antiquity of his office. The date customarily assigned to the creation of the office is 1194 A.D., but there is some evidence that coroners had been appointed even earlier and that the provisions of 1194 are directory and not creative.[1]

In the beginning the coroners were "crowners" for the king, and, as his representative, kept the pleas of the crown and had general oversight of the royal interests. Between 1194 and 1215 the powers and authority of the coroner grew rapidly at the expense of the sheriff. In fact, it is supposed that the coroners were appointed to curb the power of the sheriffs. Apparently the coroners abused their powers, for a provision of Magna Charta forbids them as well as the sheriffs to hold crown pleas. They continued to do so, however, until Edward I forbade them to do more than present the accused before the justices.[2] From this time on the authority of the coroners declined.

Although the coroner originally had other duties as a representative of the crown, he has retained throughout his long history one important function, namely that of investigating deaths that occur under mysterious circumstances. This duty and the work which he performs as a substitute for the sheriff when the latter is unable to act, constitute the only functions which he has ever exercised in America. The office exists in every state except Massachusetts, yet is everywhere looked upon as a useless relic.

Status in North Carolina:

The coroner in this state is a constitutional officer, and

[1] Shambaugh (ed.), *County Government and Administration in Iowa*, p. 280.
[2] *Ibid.*, p. 281.

the constitution provides that he shall be elected by the qualified voters of the county and shall hold office for two years. It further states that in case of a vacancy the commissioners of the county may make an appointment for the unexpired term, and when there is no coroner the clerk of the superior court may appoint one for special cases.[3]

The law requires that the coroner give bond for the sum of two thousand dollars, and that it be duly proved, certified, registered, and filed as sheriffs' bonds are required to be.[4]

Powers and Duties:

The duties of the coroner in North Carolina are substantially the same as in other states. Whenever information of a death that has occurred under unusual or mysterious circumstances comes to his attention, it is his duty to begin an investigation at once. While he is expected to be on the alert himself, cases are regularly reported to him by sheriffs, policemen, physicians, newspaper reporters, and others. After a brief and cursory examination he decides whether or not to hold an inquest. The law states that it is his duty to hold an inquest "when it is made to appear by the affidavit of some responsible person that the deceased probably came to his death by the criminal act or default of some person or persons; or at the request of the solicitor."[5]

The inquest must be held in view of the body and by a jury of "six good and lawful men." The coroner selects the jury on his own authority, often from among bystanders. He has the power to require the attendance of witnesses, but he can not compel them to testify. After hearing the testimony of those examined, the jury deliberates briefly and arrives at a verdict. In general, there are three possible verdicts: (*a*) The jury may be satisfied that the elements of mystery and suspicion have been cleared up and that no one is criminally responsible; that is, that death was the result of natural causes, pure accident, or suicide; (*b*) The jury has reason to believe that the victim came to his death by foul play but at the hands of some unknown person; (*c*) The jury not only

[3] *Constitution*, art. IV, sec. 24.
[4] *Consolidated Statutes*, 1016-1017.
[5] *Consolidated Statutes*, 1020.

concludes that there has been a murder but names the person or persons whom it believes reponsible.[6]

If the second or third type of verdict is rendered, the police officers, if they are not already upon the quest, make diligent effort to apprehend the criminal. Material witnesses are bound in a recognizance with a sufficient surety to appear at the next term of superior court and give evidence. Even if the first type of verdict is rendered, the state may not be satisfied and may make further investigations.

Coroner's Inquest Criticized:

The coroner's inquest, as usually conducted, is of little aid in criminal prosecutions and may be a real hindrance. His investigation is too informal and untechnical to be reliable. The coroner is an independent officer and in no way responsible to the prosecuting attorney (solicitor). The law does not even require that the coroner be a physician, though as a matter of practice the office is usually held by a physician. The average jury is not competent to determine the cause of death, and not infrequently a death due to violence is held to be pure accident. The solicitor is not likely to prosecute if the coroner's jury has not cast suspicion upon anybody, unless he has evidence from other sources that there has been a crime.

On the other hand, if the coroner's jury believes that a crime has been committed, full responsibility rests upon the police and the solicitor for obtaining a conviction. Everything that the coroner has done must be done over again and done more thoroughly. Most observers are agreed that the coroner's inquest is an unsatisfactory procedure and that all preliminary investigations should be made under the supervision of an official who is responsible for the apprehension and conviction of the criminal.

Not only is the work of the coroner apt to be fruitless or misleading, but it may be positively obstructive. This may be the result of his superficial methods or the result of corruption. Serious scandals in connection with the coroner's office have been reported, especially in the large urban

[6] Porter, *County and Township Government in the United States*, pp. 184-185.

centers.[7] Lawyers representing corporations may be present at inquests and influence juries to bring verdicts exonerating the corporations from responsibility in connection with the death of employees or other citizens. A coroner may arrange to select certain men for jury service on condition that they split the fees with him. Coroners and undertakers have sometimes worked in collusion, and it is not unknown for an undertaker to be elected coroner.

Coroner's Service as Sheriff:

The second and less frequent function of the coroner is his duty of serving as sheriff when there is no sheriff or when the sheriff is disqualified by reason of the fact that he is a party to a proceeding in the court. On rare occasions the coroner might even have to arrest the sheriff. This second function of the coroner has no doubt had something to do with the perpetuation of the office, but it is exercised so rarely that it ought not to have much weight in judging the need for a coroner. Other arrangements could be made. The court might appoint a sheriff to act in such emergencies.

Coroner's Office Should Be Abolished:

Students of law and government have for a long time advocated the abolition of the coroner's office. They have urged that cases now reported to the coroner be reported directly to the prosecuting attorney, and that he make the necessary investigation, employing, when necessary, competent physicians to make autopsies and scientific investigations. Except in Massachusetts, where the office was abolished in 1886 and superseded by a medical examiner, and in New York City where the office was abolished in 1915, the reformers have met with little success.[8] The office persists tenaciously for several reasons. In most states it is a constitutional office, and constitutions are not easily amended.

[7] The Cleveland Municipal Association found that the coroner was often a serious obstacle to the administration of criminal justice, because the district attorney, who was an officer of equal rank and independence, did not have any adequate power to keep him from ignorantly or malicously covering up evidence of crime in cases of violent death.

[8] Coroners in New Jersey, and especially in those counties which have developed the powers of the county physician, have been reduced to a position which is subordinate to the county physician. *Government of Hudson County, N. J.*, p. 65.

Politicians like to retain it because it can be used to "balance the ticket." The continuation or abolition of the office is a matter of so little importance in the minds of most people that they cannot get interested, and consequently the coroner survives through sheer public inertia. Possibly the very antiquity of the office works against its overthrow.

All that has been said about the coroner generally applies in North Carolina. The office neither commands respect nor excites ridicule. It is a colorless, harmless vestige of the past. Sometimes it is impossible to get anyone to accept the nomination, but ordinarily a physician, while he will not solicit the office, will accept it if it is thrust upon him. There is no valid reason for perpetuating the office. The work could be done by the county physician or the county health officer, or the solicitor might appoint a physician to assist him at his need. If, at the next constitutional convention, the coroner and the surveyor were quietly dropped from the roll of county officers few people would utter any protest. The majority of the people would not be aware of the loss.

REGISTER OF DEEDS

Requirements of the Office:

There is in each county a register of deeds elected by popular vote for a two-year term. It is a constitutional office, but a constitutional office which can be modified, changed, or abrogated by statute.[9]

The register of deeds is required to give bond with sufficient surety, to be approved by the board of county commissioners, in a sum not exceeding ten thousand dollars, conditioned for the safe keeping of the books and records and for the faithful discharge of the duties of his office. The bond must be renewed annually.[10]

The register is required to keep his office at the courthouse unless the commissioners deem it impractical. The board may also determine what days of each week and at what hours of each day the office shall be kept open. As a matter of practice it is advisable to keep the office open during the same hours as other business offices. The register's

[9] *Constitution*, art. VII, secs. 1, 14.

[10] *Consolidated Statutes*, 3545.

office must be provided with and make use of an official seal.[11]

A vacancy in the office of register of deeds is filled, as are other county offices, by the board of county commissioners.

Duties as a Recording Officer:

It is the duty of the register of deeds to record all instruments delivered to him for registration after the same have been probated by the clerk of superior court. Such instruments include deeds, mortgages, deeds of trust, liens, and other business contracts. On each instrument the register must endorse the day and hour on which it is presented to him for registration, and such endorsement, entered on his books, becomes a part of the registration.[12]

All instruments which have been recorded must be indexed and cross-indexed in well bound volumes and kept open to public inspection. The law requires that the indexing shall be done within twenty-four hours after the recording.[13] During the time between the receipt of an instrument and the recording, the register of deeds is permitted to use a temporary index. In case a temporary index is used, an instrument may be recorded and cross-indexed any time within thirty days from the date of receipt.[14] Practically all counties use a temporary index. It is not practicable to make the entries in the cross-indices every time an instrument is recorded. The indexing can be done with more rapidity and less likelihood of error if not done piecemeal. One very efficient register of deeds finds it convenient to index one afternoon a week, and in most counties this would probably be a satisfactory arrangement.

Some registers employ outside help to do the indexing. In one county a bookkeeper who was employed elsewhere during the day came to the courthouse and did indexing at night. Had he been paid by the register of deeds no criticism could have been made, but he was being paid by the county to do work that the register had ample time to do. Many of the counties have installed the Cott index system within the last few years, and some of them have the expert indexers

[11] *Ibid.*, 3548-3550. [12] *Ibid.*, 3553. [13] *Ibid.*, 3561. [14] *Ibid.*, 3553.

return periodically and bring the indices up to date. The Cott system is an index arranged on the basis of family names and is the last word in indexing. It is very simple, however, and any register of deeds of average ability ought to have no trouble in using it.

The law states that "the register shall keep in files alphabetically labeled all original instruments delivered to him for registration, and on application for such originals by any person entitled to their custody, he shall deliver the same."[15] In practice, the originals are usually called for within a few days, or postage is left for their return by mail. On the other hand, some of them are never called for.

Originally all recording was done by longhand in bound volumes, and the finest qualification a candidate for the office of register of deeds could offer was good penmanship. Some of the old records are written in an elegant hand. With the introduction of typewriters, loose-leaf binders were substituted for bound volumes. Wherever possible, forms are used so as to reduce the amount of writing to the minimum. This necessitates more books, some plain and some with printed forms, but the saving in labor is considerable. When one considers that thousands of deeds and mortgages are laboriously copied each year, one inquires if there could not be greater standardization so that forms could be used even more.

Is it not an antiquated procedure to copy deeds and mortgages, anyway? Why can not the lawyers be supplied with forms which will fit into the loose-leaf binders, and in drafting the original instrument, a carbon copy be made to be filed in the register's office? The original idea was to copy into a bound book so that the record could not be withdrawn, but now that loose-leaf records are used, that argument is destroyed. By numbering the pages consecutively with indelible ink, an omission would be just as conspicuous.

A better method still, and one that is sure to come into use eventually is to take a photograph. Insurance companies, detective agencies, and various business houses use this method to preserve documentary evidence, and there is no reason why it could not be employed by counties. In fact, it

[15] *Ibid.*, 3556.

is already in use in some of the large urban counties of the North,[16] and the practice has been validated by the court.[17] When photographs are used, there is no possibility for error as in copying. Furthermore, it preserves the signatures of the contracting parties. A photostatic machine would hardly be practical in the average county of the state, but it might be entirely feasible in counties like Buncombe and Guilford, which have a large number of land transfers each year.

In addition to the records of conveyances, the register of deeds keeps various other records, such as records of chattel mortgages, agricultural liens, farm loans, soldier discharges, election returns, and the descriptions of special tax districts. His office is also a depository for the records of vital statistics.

The Issuing and Recording of Marriage Licenses:

One of the duties of the register of deeds is to issue marriage licenses, and if it appears to him that there may be a legal impediment to a proposed marriage, he has the power to administer to the person applying for the license an oath touching the matter.[18] Where either party is under eighteen years of age, the register of deeds has no right to issue a license without the consent of the parent or guardian. If he or his deputy "knowingly or without reasonable inquiry" issues a license where there is a lawful impediment or to a minor without the consent required by law, he must forfeit $200 to the parent or guardian who sues for the same.[19]

Attached to every license is a return blank which is to be filled in by the minister or officer who officiates at the marriage ceremony. When the register of deeds receives these returns, he is required to make the following entries in his marriage register: (*a*) date the license was issued; (*b*) name of husband and his residence, age, and race; (*c*) name of wife and her residence, age, and race; (*d*) name and title of the minister or officer who celebrated the marriage; (*e*) the date and place of the marriage; (*f*) the names of at least

[16] At least in Cook County, Illinois.

[17] People *ex rel.* Armknecht *v.* Haas, 311 Illinois 164 (1924); see *Citizens' Business*, published by Philadelphia Bureau of Municipal Research, April 12, 1927.

[18] *Consolidated Statutes*, 2500.

[19] *Ibid.*, 2500-05; see *Public Laws of 1921*, chap. 129.

three witnesses who were present at the ceremony and signed the return. For failure to make such entries within ten days after the receipt of the returns, the register is subject to a penalty of $200 to be paid to any person who sues for the same.[20] It is a fact, nevertheless, that the marriage registers are not always kept up to date. Sometimes the register of deeds is not at fault, for the returns are not always mailed back.

A marriage license costs five dollars, three dollars going to the state, one dollar to the county, and one dollar to the register of deeds. If the latter is on salary his dollar also goes to the county.

Duties as Clerk to the Board:

The constitution provides that the register of deeds shall be *ex officio* clerk to the board of county commissioners, but this is one of those constitutional provisions that can be abrogated by the legislature. Nevertheless, the register of deeds acts in this capacity in most of the counties of the state. He does in all the counties where there is no auditor and in some of the counties where there is an auditor. As there must now be a county accountant in every county, this officer will probably tend to supersede the register of deeds as clerk.

The extent of the clerk's duties depends in part on the number of other officers in the county and in part on his own initiative. His routine duties consist in writing up the minutes of the board meetings, issuing vouchers on the order of the commissioners, preparing reports, writing letters, and other duties of a clerical nature. One of his most important duties has been in connection with the preparation of the tax books and the preservation and revision of the tax roll. These duties, especially the tax work, demand not only a great deal of time but the exercise of discretion. It demands far more administrative ability to be clerk of the board than to be register of deeds. Unfortunately, however, the secretarial work has been made incidental to the recording work, and the compensation of the office dependent upon the number of instruments recorded. The register of deeds has even been

[20] *Consolidated Statutes*, 2504-2505.

compensated on a fee basis for his work as clerk to the board, so much per day for each day's service as secretary, usually two dollars, ten cents for each voucher issued, and two cents a name for making out the tax list. This method of compensation has naturally resulted in the register of deeds devoting his attention to those routine duties which yield him a financial return and neglecting work which would take his time without adding to his income. Even where a register of deeds has been put on salary, he has usually been required to employ his own assistants, so that it has still been to his advantage to do as much recording himself as possible. One frequently sees a register of deeds laboriously pecking away on a typewriter copying a deed that a capable stenographer could copy in a third of the time, and neglecting important administrative duties. Naturally he is more interested in saving a dollar for himself than for the county. The register of deeds has been a failure as a clerk to the board, mainly because he has been elected and paid to do something else.

Deputies:

The register of deeds is empowered to appoint deputies, who may perform any of the duties of the office but for whose acts he himself is responsible. When a deputy is appointed, it is necessary to file a certificate of the appointment in the office of the clerk of superior court.[21] Ordinarily, a register of deeds appoints for his deputy a girl who can operate a typewriter, and she does most of the recording. After a few weeks she usually understands the work of the office as well as her chief, and possibly better. It is a waste of money to pay a man two or three hundred dollars a month to bear the title of register of deeds when the work is being done by a girl at half that salary. The person who does the work ought to bear the title and get the salary. Within recent years several women have been elected to the office, and at the present time there are women registers in Burke, Edgecombe, Harnett, Hyde, Robeson, Tyrrell, and Wayne counties. This is encouraging, for women are generally quicker, neater, and more accurate in the recording work than men.

[21] *Consolidated Statutes*, 3547.

Popular Election Criticized:

If the register of deeds is to be exclusively or primarily a recording clerk, it is illogical to fill the position by popular election. If the place were filled by appointment for an indefinite tenure, the commissioners could select a mature, capable typist to do the work for less than it is costing now in most counties. Furthermore, the place could be filled solely on the basis of merit. Better work would probably be done, both for the reason that better qualified persons could be selected and for the reason that an incumbent would be free from political campaigns. It would not be necessary to break in a new officer so frequently. The duties of the register's office are not difficult to learn, and probably most of those holding the position are doing the work quite satisfactorily, but popular election is capricious, and occasionally an incompetent person is chosen.

The Fee System:

The recording of deeds and mortgages is an individual service, and it is quite proper that fees should be charged. Logically the fees should be sufficient, and only sufficient, to maintain the office. On the other hand, it is desirable, though not always the practice, to charge the same rates in every county. Despite some variation in the fees charged, the register's office in some counties is more than self-supporting, and in others less than self-supporting.

Until a few years ago it was the general custom to compensate the register of deeds with the fees of the office, he, in turn, paying his assistants. This method had the virtue of making the office self-supporting so far as salaries were concerned, but the fee system of payment inevitably leads to abuses. These abuses are discussed in another connection and need not be enumerated here. A majority of the registers are now paid on a salary basis, the net salaries ranging from fifteen hundred to twenty-five hundred dollars with possibly a few exceeding the latter figure. The salary basis of compensation is preferable to the fee basis. The register's office is easily audited so that fees cannot be concealed. The fees ought to be uniform in all the counties and high

enough to meet all legitimate office expenses, including the cost of the books of record, in the average county.

OTHER OFFICERS

County Surveyor:

The constitution provides for a county surveyor to be chosen by popular election every two years.[22] He is required to enter into a bond of one thousand dollars, with sufficient surety, for the faithful discharge of the duties of his office. He may appoint deputies for whose actions he is responsible. He is empowered to administer oaths in connection with the performance of his duties.[23]

Originally the main function of the surveyor was to survey lands that were transferred from the public domain to private ownership. There is a law still on the statute books,[24] though rarely invoked, which permits any citizen of the state, or any person who intends to become a citizen, to make entry of, and obtain grants for, vacant and unappropriated lands of the state. When there was an abundance of unappropriated lands and frequent transfers to private entry, the county commissioners regularly appointed an entry-taker, and it was his duty, whenever an entry was made, to deliver a warrant to the county surveyor to survey the entry, plot it, and transmit a copy of the plot to the secretary of state. The surveyor was also required to keep a record of surveys in the office of the register of deeds. There is now so little good land remaining unappropriated that the surveyor is rarely called upon to survey land for private entry.

Other duties of the county surveyor are to survey any lands the boundaries of which may come in question in any suit or proceeding in court; to survey and divide the lands of intestates, or other land held in common, for the purpose of partition, or in laying off a widow's dower; and to survey and allot homesteads when summoned to do so by the sheriff.

In case a vacancy occurs in the office of county surveyor, the board of commissioners may fill the vacancy as in the

[22] *Constitution*, art. VII, sec. 1.
[23] *Consolidated Statutes*, 1383-1386.
[24] *Ibid.*, 7554.

case of other county officers. Furthermore, the court may appoint a surveyor for special cases, in its discretion.

Rarely is the county surveyor called upon to make surveys for public highways or in any way to assist with the highway work. Quite often he lacks the qualifications to undertake highway engineering. Considering the fact that the county surveyor is not utilized for road work and may or may not be employed for court work, there is little justification for continuing the election of such an officer. Popular election does not insure the selection of an officer qualified to undertake the modern engineering projects of the county. In practice the commissioners proceed to employ a capable engineer, and the law should be modified in keeping with the practice. In other words, the county surveyor is a relic of the past, and the office should be stricken from the ticket.

County Attorney:

The board of county commissioners selects its own legal adviser and fixes his compensation, unless there is a public-local act to the contrary. In most counties the attorney attends the board meetings only when he is requested to do so. In other counties it is a custom for the county attorney to meet with the board regularly. While it is of considerable advantage to have his immediate answer whenever legal questions arise, it is not an altogether desirable practice to have him in constant attendance. If he confines his comments to points of law, his presence may be helpful, but he is apt to express himself freely on all questions and thus exert undue influence. At any rate, the people rather resent his being there. When they come before the board with a request, they do not like to be cross-examined by a lawyer.

Unless there is litigation or unusual difficulties to be settled, there is no reason why the county attorney should receive more than a nominal fee. In one representative county the attorney receives a retainer of one hundred dollars a year and occasionally an additional fee for a written opinion. In other counties with no more business, the county attorney is being paid five or six hundred dollars a year. This is an unnecessary waste of public money. As a matter

of fact, a county with a shrewd auditor ought rarely to have need for an attorney. It does not require a lawyer to understand the laws which appertain to county administration.

Apparently many county attorneys have done little more than accept their salaries. At least they have not prevented violation of the tax laws, violation of the law regarding settlements, violation of the law in regard to making reports, violation of the debt-limitation law, and a score of other common violations.

The county board of education employs its own attorney, though quite frequently the same lawyer advises both boards. The road board in some cases has a separate attorney.

In many states the county attorney, or county prosecutor, or district attorney, whatever his title, is a very important official, corresponding to the district solicitor in this state. Where there is an elective county prosecuting attorney he becomes *ex officio* legal adviser to the county board. This has not proved a satisfactory arrangement, for it sometimes means that a policy-determining body is obliged to turn for legal counsel to a person whose views are antagonistic to its own. The arrangement in this state whereby a board selects its own counsel is preferable. It is true that the same person may serve as county attorney and solicitor of the recorder's court, but if so, it is a voluntary arrangement, not one fixed by law.

County Agricultural Agent:

One of the newest yet most important members of the courthouse family is the county agricultural agent. Indeed he deserves a larger mention than the limitations of this chapter will permit.

Although not intimately connected with the county government organization, he nevertheless receives his appointment from the county commissioners and holds office during their pleasure. Fortunately the work of the county agent has not been influenced noticeably by party politics, but the success of the work has been hampered by one brand of politics. Because the agricultural work is a new activity of county government, many people look upon it as

extravagant and unnecessary. Candidates for the county board, therefore, find it a good campaign argument to advocate the discontinuance of the work on the ground of economy. It has quite often happened that about the time an agent gets acquainted with his territory, an economy administration removes him. A year or so later the work is resumed with a new man in charge, and he too must start at the beginning.

The county agricultural agent is an employee of the state as well as of the county, and generally receives about half of his pay from the state. While the county makes its own appointment, it must make its selection from among an accredited list. As a matter of practice, the district agent is usually requested by the county to recommend a suitable man. The county agent is also a federal employee and enjoys the franking privilege.

The work of a county agent varies, of course, in the different counties, but in general his work is to assist and encourage the farmers in the development of a sound and profitable agriculture. He instructs them in approved methods of farming and brings to their service experts, from time to time. He encourages balanced production and assists in the marketing of farm produce. He encourages the development of farmers' coöperative associations, both for production and marketing purposes. The county agents of the state have done much to improve the quantity and quality of livestock in the state and are largely responsible for what progress has been made in dairying and poultry raising. Another important phase of their work is the promotion and direction of clubs for boys—calf clubs, pig clubs, corn clubs, and the like.

In several counties the county agent is assisted by an agricultural board consisting of a dozen or so representative farmers, who conduct demonstrations on their farms. While only a relatively small percentage of the farmers of a county will avail themselves of the services of the county agent or will be guided by his advice, the number is constantly increasing. Although often criticized and unappreciated, he is the one officer on the county payroll who is trying to increase the county's taxable resources and general prosperity.

In some counties his labor has added several hundred thousand dollars to the wealth of the county and increased the income of scores of farmers.

The Home Demonstrator:

Fully as important as the work of the county agricultural agents is that of the home demonstrators. They attempt to encourage and assist the farm women and improve the quality of the farm homes. The home demonstrators are all thoroughly trained in home economics, and most of them possess a versatility and enthusiasm that inspire the confidence of the farm women. The scope of their instruction and demonstration is wide. They teach the women and girls of the country dressmaking, millinery, canning, cooking, dietetics, gardening, poultry raising, marketing, household budgeting, and a great variety of other practical things. One of the benefits of their work has been the installation of conveniences in the farm kitchen and the introduction of taste and beauty in home decorating and furnishing. Through their efforts hundreds of farm women have become interested in books, flowers, and other things to break the routine of rural life. One home-demonstration agent arranged a camping trip for farm women, some of whom had never had a day's vacation since their marriage.

Their work also includes the club work with girls—sewing clubs, canning clubs, poultry clubs, and clubs of other sorts. Through these clubs many country girls have discovered a new interest in farm life, and many of them have earned enough money to clothe themselves and at the same time have learned the art of dressing becomingly. These things have given girls of the country grace and confidence that will benefit them through life.

The work of the home demonstrator has carried light and culture to the farm homes. It has helped to relieve the drudgery, the monotony, and the loneliness of these homes. It has given the women and girls on the farms a new outlook and a new courage. It has enriched and will continue to enrich a segment of humanity which has too long been neglected.

Chapter XII

EFFICIENCY IN COUNTY GOVERNMENT

THE PRESENT SITUATION

In the preceding chapters an effort has been made to portray the laws and practices of county government in North Carolina. The reader has therefore discovered, if he did not already know it, that there is in the system much to commend and much to deplore. In a few particulars, notably in tax collecting and in fiscal management, North Carolina counties have been flagrantly lax. On the other hand, they have been singularly free from some of the abuses which have characterized county government in other states. They have not been boss-ridden as in some states; neither have they been the victims of wholesale corruption. The evils which have existed have been, for the most part, the product of a loose, disjointed system, manned by well-meaning but often incompetent officials. While the needed improvements are mainly functional, it is evident that certain structural changes in the county organization would simplify the processes of government and aid in the establishment of sound fiscal control.

Fortunately the reorganization of county government does not have to wait upon constitutional revision. Except for sweeping changes in the judiciary or in the tax system, all necessary improvements can be made by statute. Many improvements have been so made within the last decade—the establishment of the county boards of welfare, the juvenile courts, the county health departments, the consolidated schools, and now a county accountant and a plan of budgetary control in every county in the state. These gains are far-reaching and have placed North Carolina at the head of the procession in improved county government. Nevertheless, there is still much to be done. Good laws do not necessarily mean good government; practice does not always measure up to the legal standard; and such is the case in

North Carolina. Some of the new standards set up have been like new patches on old garments.

In the treatment of particular offices and departments in the preceding pages, various suggestions for improvement have been made, and it is not necessary to expand on those comments. It will be sufficient in this chapter to pick up the scattered threads and, if possible, weave them into a design of government that is simple, well-balanced, democratic, and attainable. No upheaval is desirable or necessary. No plan of county government should be promulgated that violates the principles of local self-government and popular control. That does not necessarily mean adherence to old forms. A multitude of elective officers does not guarantee popular control. Indeed the very multiplicity of such officers may defy popular control. We need less of what H. S. Gilbertson calls "democracy via complication"[1] and more government that is simple, easily understood, easily controlled. At the same time government must introduce methods of operation that will yield the largest possible service for every dollar of tax. Some have complained that democracy must not be sacrificed on the altar of efficiency. There is no danger that it will be. Democracy can be saved only by the injection of a degree of efficiency. While *efficiency* has come to be a very much over-worked term, it is one which has scarcely been heard in county courthouses.

Steps toward Fiscal Control:

The first principle of good government is sound fiscal control. If there is mystery, obscurity, and complexity in the handling of public funds, there will most certainly be waste and fraud. When every detail in the collection, custody, and expenditure of public funds can be easily observed, irregularities will cease. When there is the fullest publicity, sources of waste will be discovered and eliminated. But there cannot be complete publicity and popular comprehension unless all the streams of revenue and all the streams of expenditure converge in one office and are reflected in one set of accounts. Sound fiscal control, therefore, demands unified control.

[1] *The County*, p. 38.

North Carolina counties have now been provided with the machinery to realize this sort of control. The budget, the county accountant, the annual exhibit, the collection and settlement of taxes within the fiscal year, are all features of the new plan to attain this end. So important and so fundamental does the writer consider this phase of reform that a separate chapter has been devoted to it.

Although the enactment of this legislation is a real gain, it is far from a final victory. While generally recognized as constructive legislation and readily accepted by a majority of the counties, there are other counties, dominated by local politicians, who prefer the old slipshod methods. We may confidently expect an attempt on the part of a few counties to get exempted from the provisions of the new laws at the next session of the General Assembly. The representatives from the counties which are sympathetic with these laws should resist the passage of all local acts which are designed to weaken or nullify or restrict the application of these constructive measures.

Another possibility which would be almost as disastrous is that the new laws will not be enforced any better than previous tax laws. It may be that the letter of the law will be enforced but not the spirit. For instance, some counties have appointed as county accountants ex-sheriffs, ex-treasurers, or other citizens who are not properly qualified. Other counties have imposed the duties on the register of deeds, a member of the board, or some other officer who may have neither the time nor the ability to perform the work satisfactorily. If the counties insist on giving the administrative positions to such appointees the most carefully drawn laws will be of little avail. It will take a vast amount of education before the standard set up by the General Assembly of 1927 is fully realized.

Granted that a satisfactory system of fiscal control is introduced, it will not necessarily produce efficiency. Though of fundamental importance, it does not prevent the wastes which are the result of a faulty organization and an incompetent personnel. It will be desirable, therefore, to examine these aspects of administration.

PRINCIPLES OF ADMINISTRATION

County government is largely a matter of administration. Its work is not unlike that of a public service corporation. Its efficiency must be judged by the same standards. Its aim should be to render a satisfactory public service at the lowest possible cost. It must seek to effect economies and to increase its efficiency by adopting those practices which have proved successful in private business.

Through years of experiment and investigation, private enterprise has established certain fundamental principles as axiomatic. Among them are: (*a*) concentration of authority, (*b*) coördination, (*c*) standardization, (*d*) trained personnel, (*e*) reward for merit, (*f*) development of good will, or public confidence. All of these qualities are as necessary in the public service as in private business.

Concentration of Authority:

Almost everywhere the county is devoid of a definite executive head. No other unit of government, no other corporation, public or private, has attempted to function without headship. It is to omit the keystone in the arch of corporate life. This lack of centralized authority in the county is perhaps more responsible for the deficiencies in county administration than any other single factor. Divided responsibility tempts the weak man to be dishonest; it encourages the plunger to be extravagant; it conceals the mistakes of the stupid; it shifts blame to the shoulders of the innocent; it nullifies the efforts of the prudent; and it paralyzes the ambitions of the genius. When our American political institutions were set up, there was a revolt against anything that savored of monarchy. No officer was entrusted with much power for the fear that he might become tyrannical. A chief executive for the county was considered unnecessary as well as unsafe. Each county function was entrusted to an independent officer receiving his commission straight from the people and accountable solely and directly to them. To discourage further any propensities toward despotism, the powers of an officer were restricted by an elaborate system of checks and balances. The colonists

sought to set up a "government of laws, not of men."[2] Their system presupposed two things—simple governmental functions and an alert body of citizens. Neither of these conditions any longer prevails. Experience has proved convincingly that there is no safety in checks and balances, but, on the contrary, that divided responsibility is dangerous, and a serious and unnecessary obstacle to the efforts of the citizens to control their government. Dividing up authority into many disjointed fragments has made popular control difficult and efficient administration impossible.

Recognizing the need for centralized authority, a few scattered counties have taken steps to supply it. In 1900 the two first class counties of New Jersey (Hudson and Essex) created the office of county supervisor. He is elected by the people of the county at large and constitutes the chief executive officer of the county. Denver City and County (consolidated) has a strong executive in the person of the mayor. The president of the board in Cook County, Illinois, has large executive powers. In Tennessee and Alabama the probate judge is, in actual practice, a strong executive. In several states the county clerk has assumed powers that would normally belong to a chief executive. In fact, the lack of a definite executive head in the county organization has resulted in a tendency to elevate some other official to a higher status than was originally intended. Professor Fairlie suggests that it may be easier to bring about the needed concentration of executive authority in an existing official than to create a new executive. In that case, however, the official who has been exalted should have his new powers defined and fortified by legislative enactment. He should not rule by consent alone, but he should have the power to compel obedience.

The Political Boss. Though not so general in North Carolina as in some states, a frequent result of the lack of official headship in county government is the appearance of an unofficial head in the person of the county boss. The diffusion and obscurity of authority in county government makes it easy for the political boss to gain control. The usual result is that the county offices then become little more than

[2] Gilbertson, *op. cit.*, p. 35.

gifts to be distributed to his henchmen, and the treasury becomes his to plunder. It is conceivable, however, that the county boss may use his power in furthering the interests of his county. However he may choose to use his power, he at least supplies an element of cohesion to an otherwise nebulous system.

County Auditors in North Carolina. Forty-odd North Carolina counties have attained a fair measure of administrative unity by creating the office of county auditor. In most cases the auditor is appointed by and is responsible to the board of county commissioners, though in a few counties the office is elective. The auditor's work includes more than the duties of an accountant, though such duties are an important part of his work. Ordinarily, he acts as clerk to the board and as its executive agent. Sometimes he serves as purchasing agent and sometimes as tax supervisor. The range of his activities varies with the volume of county business and the number of other clerical and administrative officers. In Mecklenburg and Pitt counties, for instance, he is an auditor in the strict sense of the term. In these counties there are separate tax officers. In Buncombe County the auditor is tax supervisor but not purchasing agent. The same is true in Guilford and Durham counties. In Edgecombe, Moore, Scotland, Lee, and many other counties the auditors have the additional duties of both tax supervisor and purchasing agent.

There is no doubt as to the value of such an officer. He supplies, in large measure, the unity and continuity in administration which has been so much needed. He becomes the representative and executive agent of the board and relieves its members of the details of administration. Being constantly at his post, he can keep informed about conditions in the several offices as an absentee board cannot possibly do. If he is a competent accountant, as he should be, he can introduce system and safety into county finance by preparing the annual budget and seeing that it is adhered to. He can serve the board in a multitude of useful ways, both in collecting and assimilating information for its guidance and in executing its orders. He is a valuable ministerial officer. Through him the will of the commissioners

is expressed. With his assistance the commissioners are able to perform their administrative duties with much more efficiency. Those counties which have had a capable auditor for a period of years are, on the whole, better governed than those which have not had such an officer.

It was pointed out in Chapter VI that a county accountant must now be provided in every county. Where there is already an auditor he becomes county accountant with practically no change in duties except the additional ones incident to the use of a budget. If all counties appoint as county accountants persons "experienced in modern methods of accounting" as the law stipulates, all the counties may enjoy the same benefits as have come to those with capable auditors.

The auditor or county accountant should not be thought of, however, as an executive. He has no powers of initiation. He does not determine policy. He makes no appointments. He has only delegated authority.

The Chairman of the Board as an Executive. With the growing volume of county business involving the expenditure of huge sums of money, it has become impossible for the commissioners, meeting one or two days a month, to keep up with their duties. It has become necessary for all of them to devote several days a month to county work or for one of them to devote his whole time. The latter practice has generally proved more satisfactory. Important decisions continue to be made by the full board, but the tendency has been to delegate more and more authority to the full-time member. He is usually made chairman and as such can sign vouchers and other instruments.

With a capable and energetic chairman devoting all or a major part of his time to county work, an executive headship is provided which is quite satisfactory. Although a stronger executive than the auditor, the chairman of the board may be inferior to the auditor as an administrator. Being popularly elected, he is more subject to political pressure and less likely to be qualified.

Neither the auditor nor the full-time chairman entirely meets the requirements of a strong executive. The success of the city-manager plan of municipal government has sug-

gested the possibilities of a county manager, and the demand for such an officer has become more and more insistent in this and other states.

In 1923 the chairman of the board of Alamance County was made a county manager by act of the General Assembly, thus becoming, so far as the writer has been able to discover, the first county manager in the United States. It is possible that he does not satisfy the definition of a county manager, for he is not the creature of the board. He is elected by popular vote as chairman and manager. Nevertheless, he has the powers of a manager. In addition to his duties as chairman of the board the law states that he shall (*a*) act as purchasing agent; (*b*) have under his direct supervision, control, and management the building and maintenance of all county highways and bridges; (*c*) have general charge of all the finances of the county; (*d*) sign or countersign all vouchers whether payable from the general county fund, the highway fund, the school fund, or any other fund; (*e*) act as tax supervisor; (*f*) have entire supervision of the county home, the jail, the workhouse, and all public property owned by the county except schoolhouses; and (*g*) with the approval of the county commissioners, employ and fix the compensation of all necessary superintendents, employees, and janitors necessary to superintend and keep and maintain said buildings and property.[3]

The Alamance County chairman is probably the strongest county executive in the state. In him authority is concentrated to a marked degree. In actual practice he does not exercise his full powers. Through courtesy he lets the sheriff, the clerk of the board, and the other members of the board enjoy most of their former privileges. Possibly this policy is dictated by political expediency, for it is to be remembered that he is elected by popular vote. Public sentiment favors popular election, but students of government generally agree that the county executive should be appointed by and responsible to the board of commissioners. That is what the strict county-manager plan contemplates.

[3] *Public-Local Acts of 1923*, chap. 47.

The County-Manager Plan. Under the county-manager plan, as explained by Professor C. C. Maxey,[4] the powers of the county board should be so enlarged that through the agency of the manager it will be charged with all of the work at present performed by the multifarious independent functionaries of the county. Its active work, however, should be limited to the employment and removal of the manager, the receipt and consideration of reports from the manager and auditor (if there is one), the adoption of the annual budget, the levy of taxes, and the enactment of administrative rules governing the manner in which the manager and other employees shall perform their duties. In recommending the manager for Delaware counties, where the board is called the *levy court*, Mr. Maxey says:

> The general manager of the county should be chosen by the levy court. He should be selected very much as a private corporation chooses a manager. . . . He should not have a fixed term of office, but should be subject to removal at any time by the levy court. He should be required to make reports to the levy court once a week or oftener if desired. The duties and powers which should be conferred upon the manager may be enumerated as follows:
>
> 1. To attend all meetings of the levy court.
>
> 2. To execute and enforce all resolutions and orders of the levy court, and see to it that all laws of the state required to be enforced through the levy court or other county officers are faithfully carried out.
>
> 3. To recommend to the levy court such measures as he deems necessary for the proper administration of the affairs of the county.
>
> 4. To appoint all county officials and employees whose selection is not otherwise provided for in the laws and constitution of the state.
>
> 5. Subject to resolution of the levy court
>
> (a) To purchase all supplies and materials used by all county officers, departments, or institutions.
>
> (*b*) To execute contracts on behalf of the levy court.
>
> (*c*) To obtain reports from the several county officers and departments supplying such information, presented in such form and at such times as the levy court may require.

[4] *County Administration*, p. 48.

(*d*) To procure from the several county officers and departments estimates of revenues and expenditures for the ensuing year and transmit the same with his approval or disapproval of each and all of the items therein, in the form of a tentative budget, for the final sanction of the levy court.

(*e*) To perform such other duties as the levy court may require.[5]

There are many strong advocates of the county-manager plan. Richard S. Childs, one of the foremost students of county government in America, says:

If we can keep away from the old-fashioned doctrinnaire theories which have made so much trouble for this nation in the last hundred years, we should be able to agree that the county, like any other organization, private or public, needs a chief executive with appointive power over all other administrative officials. Not until all the officials have a single common superior on the job all the time, with plenty of authority over them, can they be compelled to work in mutual harmony. . . . There has been ample experience to show that the attempt to secure a good chief executive by popular election is a failure. It always gives us a transient amateur who never really learns his job, because he is not allowed to stay on the job long enough. The cities have been all through that phase and are abandoning the elective chief executive, or mayor, and moving onward to the type of government in which the chief executive is appointed and held subject to the continuous supervision of the joint mind of a board or commission. Accordingly, let us look forward to a time when counties will be governed by a small board of supervisors, a board small enough so that each member will be a really important officer with power enough in the government to make it worth while for the people to scrutinize the candidate carefully and watch him after election. A board of three or five or seven will be better than a board of twenty or thirty.

Let this small board of supervisors (or commissioners) possess all the powers now vested in all officers of the county, except the county judge. Put upon them the responsibility for all of the work of the county. Permit them to hire their county manager from anywhere in the United States and pay him whatever salary they believe necessary in order to secure the requisite ability. The county manager will appoint and control all other county

[5] *Ibid.*, p. 49.

officials and employees, subject to civil service regulations. The county manager will have no power of his own, no independence of his superior. He is the board's executive agent. If the new board of supervisors tells him to take money out of the treasury and spend it for peanuts, he must spend it for peanuts or take a chance of losing his job. The supervisors who hire him can also fire him. The county manager, naturally, would be expected to relieve the supervisors of all details, and if they found him trustworthy and devoted to their service they would probably leave him considerable discretion, but they would have to take the responsibility for him if he proved to be foolish or weak or dishonest.[6]

What Mr. Childs has in mind is to organize county government along the same lines as has proved successful in city government. The county manager would be to the county what the city manager is to the city. If we are to judge from a few years' experience, the city-manager plan is the best plan of city government that has yet been invented. It is at least logical to believe that the same general scheme will work well in county government.

H. S. Gilbertson is confident that it is the proper basis for reconstructing county government. He says in part:

The city-manager plan is unity and simplicity reduced to its lowest terms: the plan of the typical business corporation. A board of directors to represent the people; a city manager to appoint and direct the heads of departments—that is all there is to it. And it works. In similar fashion the people of our counties will surely consent to a reorganization of their public affairs. The members of the county boards will not follow the example of some of our present county commissioners and personally descend to the management of the details of administration. They will learn the art of delegating authority without losing control. . . . The county of the future will employ a manager chosen appropriately with sole reference to his fitness to manage public affairs and without regard to residence, religion or views on the Mexican situation, who will pick up the authority of the county where the board of directors leaves it off. . . . He will be the especially accredited agent of the county board in carrying out its policies and the initiating force of public opinion. Through

[6] *The County-Manager Plan*, being a paper read before the First Conference for Better County Government in New York State, held at Schenectady, N. Y., Nov. 13-14, 1914.

the governing board and the county manager there will be a clear and direct succession of authority from the people to the scullion at the almshouse and the assistant turnkey at the county jail.[7]

The late Herbert Quick was one of the first of the popular writers to advocate the county-manager plan. A few extracts from his writings follow:

A county is a corporation. No business corporation could avoid prompt bankruptcy if organized as are our counties. Any business corporation has a head. Usually he is the general manager. Bookkeepers, men who handle funds, engineers, field men are hired and fired by the general manager. Efforts are being made in many localities to adopt the system of having a manager for counties, just as for business corporations. The city-manager plan has worked so well in cities that we cannot doubt that it would redeem county government. Under a law properly drawn and in an intelligent community it could not fail. . . .

Under the county-manager plan we should elect no county officers except the members of the county board. The board would put the running of the county affairs in the hands of a county manager, and he would hire and fire all the rest of the employees.

The county board would meet seldom, and by reason of the fact that the county manager would always have everything ready to be passed upon, though their work would be very important, it would take little time; and I do not believe that these men should receive any salaries. Where school boards serve without salary good men are willing to accept the office. The county manager would plan and execute. The county board should only approve and authorize. . . . The old system of divided responsibility would be replaced by centralized responsibility. Politics would be succeeded by business. . . . County management would soon become a regular profession, just as city management has already done. The system would be economical. It would be efficient. If things should go wrong you would always know whom to blame.[8]

Perhaps these men and the hundreds of others who advocate the county-manager plan are extravagant in their

[7] *The County*, pp. 175-177.

[8] *A New Kind of County Government*, a pamphlet issued by the National Municipal League, 1924.

claims. It is safe to venture that no scheme of government will work perfectly. The cities operating under the city-manager system have not witnessed a uniform degree of success. The county's problem of government is slightly different from that of the city. It does not enjoy the degree of home rule that a city enjoys. It has different traditions. It has a more conservative population. Its people are less familiar with the corporate scheme of organization in private business, and hence would not appreciate so readily the need for it in public business. These are not arguments against the county-manager plan but are facts which should not be overlooked when urging its adoption. Nevertheless, the demand for county managers is strong in North Carolina and the way is now open for the appointment of one in any county of the state.

New Legislation Provides for Manager:

In order to provide unity and responsible executive headship in county government, the General Assembly of 1927 passed an act entitled "An Act to Provide Improved Methods of County Government." The act recognizes two forms of county government—the County Commissioners Form and the Manager Form. The County Commissioners Form, which is the existing form, may be modified in membership or term of office by local initiative. The method has been described in Chapter IV of this book.

The provisions in regard to the establishment of the manager form are worthy of quotation here:

Manager appointed or designated. The board of county commissioners may appoint a county manager who shall be the administrative head of the county government, and shall be responsible for the administration of all the departments of the county government which the board of county commissioners has the authority to control. He shall be appointed with regard to merit only, and he need not be a resident of the county at the time of his appointment. In lieu of the appointment of a county manager, the board may impose and confer upon the chairman of the board of county commissioners the duties and powers of a manager, as hereinafter set forth, and under such circumstances said chairman shall be considered a whole-time chairman. Or the

board may impose and confer such powers and duties upon any other officer or agent of the county who may be sufficiently qualified to perform such duties, and the compensation paid to such officer or agent may be revised or adjusted in order that it may be adequate compensation for all the duties of his office. The term "manager" herein used shall apply to such chairman, officer or agent in the performance of such duties.

Duties of the manager. It shall be the duty of the county manager: (1) to be the administrative head of the county government for the board of commissioners; (2) to see that all the orders, resolutions, and regulations of the board of commissioners are faithfully executed; (3) to attend all the meetings of the board, and recommend such measures for adoption as he may deem expedient; (4) to make reports to the board from time to time upon the affairs of the county, and to keep the board fully advised as to the financial condition of the county and its future financial needs; (5) to appoint, with the approval of the county commissioners, such subordinate officers, agents, and employees for the general administration of county affairs as the board may consider necessary, except such officers as are required to be elected by popular vote, or whose appointment is otherwise provided by law; (6) to perform such other duties as may be required of him by the board of commissioners.

Removal of officers and agents. The county manager may remove such officers, agents, and employees as he may appoint, and upon any appointment or removal he shall report the same to the next meeting of the board of commissioners.

Compensation. The county manager shall hold his office at the will of the board of commissioners, and shall be entitled to such reasonable compensation for his services as the board of commissioners may determine. The board shall also fix the compensation of such subordinate officers, agents, and employees as may be appointed by the county manager.

Manager plan adopted by popular vote. If the board of county commissioners does not exercise its discretion to appoint or designate a county manager, as above provided, a petition may be filed with the board, signed by voters not less in number than ten per cent of the whole number of voters who voted at the last election at which votes were cast for Governor, asking for the adoption of the manager form of county government. Upon the filing of such petition, the board of commissioners shall order an election to be held under the general law governing elections for members of the General Assembly in the county presenting the question of the

adoption of the manager form of county government. If a majority of the votes cast at such election shall be in favor of such manager form, the board of commissioners shall proceed to appoint a county manager as provided in this act.

How often elections may be held. Not more than one election may be held within any period of twenty-three months upon the question of modifying the county commissioners plan, nor more than one election in any period of twenty-three months upon the question of adopting the manager plan, whether or not any such election resulted in favor of the question submitted or against the same.[9]

This legislation does not guarantee the wholesale adoption of the county-manager plan, but it does provide an easy means of attaining it wherever there is considerable sentiment in favor of the plan. The act does not guarantee that the manager be an independent officer; the managerial powers may be given to the chairman of the board, the register of deeds, or some other elective officer. This feature will not satisfy those who want the plan in its perfect form. Appointment of the manager by the board is unquestionably a better plan than popular election. Nevertheless, either plan offers a degree of executive headship that has been generally lacking.

Already several counties have created the office of county manager in one form or another. Iredell County has a manager appointed by the board. Davidson County has conferred the managerial powers upon the newly appointed county accountant. This combination ought to be a very satisfactory one and an arrangement that will meet the needs of half of the counties of the state. Guilford County has made the chairman of the board county manager in name, though the auditor continues to exercise many of the powers that would ordinarily be exercised by a manager.

There is a prospect that numerous county managers will be appointed or elected in the counties of the state within the next few years, especially if the first experiments are successful. It will be a great mistake if the first counties which introduce the plan make political appointments rather than give sole regard to merit.

[9] *Public Laws of 1927*, chap. 91.

Distinction between Executive and Administrative Powers:

In the preceding paragraphs the words "administrative" and "executive" have been used repeatedly. Although many writers use these two words interchangeably and indiscriminately, they do not mean exactly the same thing and should not be confused. An administrative officer may or may not be an executive. He becomes an executive only when he is permitted to exercise discretion, to issue orders, to command other persons; in a word, it is the function of an executive, not to administer the law but to see that it is administered. He represents the whole government and is a unifying force, while an administrator is usually connected with a single department. The executive helps shape the policy of the government; an administrative officer simply carries out the orders of his superior.

Professor W. F. Willoughby states the distinction in these words:

> The executive function is the function of representing the government as a whole, and of seeing that all of its laws are complied with by its several parts. The administrative function is the function of actually administering the law as declared by the legislative and interpreted by the judicial branches of the government. This distinction is usually made by declaring the executive function to be essentially political in character; that is, one having to do with the determination of general policies, and involving the exercise of judgment in its use; and the administrative function to be concerned with the putting into effect of policies as determined by other organs.[10]

The questions arise: What sort of officer does a county need? Does it need a single, powerful executive, or does it need simply more competent administrators? Where does executive power now reside? Is a county manager an administrative or an executive officer? Is a county auditor an executive?

Let us attempt to answer these questions by first examining the position of the county board. Except in a very limited sense it is not a legislative body; its powers are chiefly of an executive nature. At present, it is the only executive au-

[10] *An Introduction to the Study of the Government of Modern States*, p. 232.

thority which a county has. It constitutes a plural executive and, for most of the time, an absentee one. The county board is analogous to the board of directors of a corporation, but unlike the board of directors, it has not been choosing a business manager. The manager or president of a corporation is a responsible executive because he represents and speaks for the directors, and, in all matters of detail, issues orders which are final. Of the need for a similar county executive there can be no doubt.

A county manager, possessing powers equivalent to those exercised by the manager of a private corporation, would give the county the executive headship which it so very much needs. A county auditor, while a very useful officer and one whose presence may secure unity in fiscal management, can hardly be considered an executive. He makes no appointments, issues no orders, and in no way directs administration. It is true that in some counties there is an officer called an auditor, who is in fact very much more than that. When such an officer acts in the name of the board and in that capacity makes decisions and directs administrative policy, he becomes an executive. If a county has an officer of that sort, no additional executive is likely to be needed, though an enlargement of the powers of the auditor, so-called, may be desirable.

It is important that executive and administrative functions be differentiated in order that administration may be freed from political interference. The popular will, as expressed through the legislative and executive branches of government, should determine governmental policy, but it should not interfere with the details of administration. In other words, administrators should be selected because of their experience and technical skill and then left alone in the performance of their duties. County commissioners should have no administrative duties.

Coördination:

The principles of sound business administration mentioned at the beginning of the chapter are so interrelated that it is impossible to discuss them separately without overlapping. Thus, in discussing concentration of authority, we

have also had in mind administrative unity or coördination. They are two aspects of the same thing. There can be no complete coördination of effort until there is unity of control, or, stated positively, coördination will follow centralized control as a natural sequence.

When our present state constitution was adopted, it was contemplated that the board of county commissioners should be the exclusive governing body of the county. And, for a period, this body had control of schools, roads, elections, and every other activity of county government. Gradually, however, the powers of the county commissioners have been taken from them and given to independent boards—the board of education, the board of elections, the highway board, and others. These secondary boards are in no sense subordinate; they determine policy in their respective fields, subject of course to state restrictions. Not infrequently there is friction between the county board and one of the other boards. It cannot be maintained that these separate boards have no justification. The creation of a separate board of education was, no doubt, an effort to divorce school administration from local politics. A separate road board has sometimes improved the quality of the highway service. Decentralization of power, though sometimes resulting in an immediate gain, is, nevertheless, contrary to sound principles of government and is not to be encouraged. Divided responsibility means an obscurity of responsibility, which defies popular control.

It may not be possible to adopt the principle of administrative unity so completely in county affairs as in private business, for the reason that the nature of the work is not so unified. Education is more than a phase of county administration; it is a state function. Thus the county education department is more closely connected with the state department of education than with the other departments of county government. The administration of justice is another state function locally administered. Probably the departments of county government can never be coördinated to the degree that the departments of a business concern can be. Nevertheless, those phases of administration which are under county direction could be correlated more closely than

they have been in the past. There should, at least, be unity of fiscal control through a budget and a business manager. The budget should cover all offices and departments, and none should be allowed to exceed the allowance set up in the budget. There should be centralized purchasing and centralized auditing. All officers whose duties are strictly administrative should be appointed by and responsible to the county commissioners directly, or through their agent—the county manager. This would excuse the sheriff, the clerk of superior court, and the coroner, who are essentially state officers. It would also excuse the superintendent of schools, who is responsible to the board of education. In matters of finance these officers should, however, be subjected to the same rigid control as the others.

There will never be complete unity and coördination of effort among a group of officers each of whom is elected by the same body of electors. There can be unity of control, however, on one basis and one only, and that is fiscal control. There may be lack of harmony, but there can be no great amount of mischief if there is adequate fiscal control.

Standardization:

The principle of standardization has only a limited application in county government. The State Board of Welfare has worked out a score card for checking up county homes, jails, and other county institutions. The county health units are ranked according to certain standardized tests. The clerks of superior court, through their state association, are endeavoring to get a uniform schedule of fees adopted over the state. An effort is being made to induce all counties to prepare their budgets on the same form of blank, and as far as possible to use the same classification of accounts. It is hoped that eventually all of the counties will be using accounting methods sufficiently alike to make their annual reports comparable.

Trained Personnel:

Most county officials come into office without any preparation for, or definite conception of, the work before them. They manifest a sublime faith in their ability to

"catch on" within a few weeks. Sometimes the retiring officer helps the new incumbent get started, although this assistance may be withheld if the two are political enemies. Sometimes an ex-officeholder of the same party is available as a tutor. Frequently there is a deputy or clerk who holds over and serves as a schoolmaster to the new chief, though this may not be the case if politics is acute. The most usual method is for the new officer to grope blindly along in the paths worn by his predecessors, and even the dullest will acquire a certain amount of comprehension in time. The county is constantly "breaking in" new officers at great cost and inconvenience to the taxpayers. A novice in any position is not only slow but may innocently make mistakes which are serious in their consequences.

Experience is a good teacher, and it would be well if those who have served as subordinates in the various county offices were promoted when there are vacancies higher up, but this is not often the case. An efficient clerk may not be a good campaigner and thus not acceptable to the party leaders. It is very common to find a deputy clerk of the court or a clerk in the register's office who has become very proficient—much more so than the titular head of the office—yet it is very rare when such a deputy or clerk is nominated for the higher position. Such promotions will not be frequent so long as clerical positions are filled by popular election.

In county administration there is an increasing need for men with technical training. The construction of highways, the assessing of property, the administration of the schools, the care of delinquents, the protection of public health, are all matters which should be in the hands of experts. Popular election will not provide trained administrators. North Carolina is ahead of some other states in that it does not attempt to choose its superintendents of schools, its tax assessors, its road supervisors, and its superintendents of public welfare by popular vote. The appointment, rather than election, of such officers makes it easier to secure persons who have the proper qualifications. It does not follow, however, that appointments are always based on merit alone. Indeed, there is no way to guarantee that

boards of county commissioners and boards of education will always make wise and unprejudiced selections. Generally, however, a small board will weigh a candidate's fitness more carefully than will the electorate.

In order to obtain trained and competent men for the administrative positions in county government, three things are necessary: (*a*) The positions must be filled by appointment rather than by popular election. The application of the short ballot principle to North Carolina county government will be discussed presently; (*b*) Appointments must be limited to those who are qualified by training and experience; (*c*) There must be sufficient compensation and security of tenure to induce young men to enter this field of public service.

Reward for Merit:

The fulfillment of these last two requirements is essentially the purpose of civil service examinations and rules in state and municipal government. It is doubtful, however, if the civil service principle can be applied very far in the average rural county. The number of appointments in each county is so small that a county civil service commission is not warranted. The appointing board must be its own examining committee. Nevertheless, merit should be recognized in county administration (*a*) by promoting deputies who have displayed ability and energy, thus encouraging a system of apprenticeship, and (*b*) by rejecting applicants for technical positions who have not had adequate training. Possibly in time there will be a state civil service commission to pass on the eligibility of candidates for certain county positions, but a better practice would seem to be that which is already in operation in the case of county superintendents of public instruction and county superintendents of public welfare. In each case the respective state board may reject an appointment made by the local board if the appointee is manifestly unfit. It might be well to give the state auditor a similar voice in the selection of county accountants or county auditors.

County government will never attract the ablest young men until it offers an opportunity for a career. A political

office, secured through popular election, is always a precarious possession, but an administrative position in the public service, earned through merit, ought to offer security of tenure. This does not mean that a man who fails to improve himself or who displays no energy should be indefinitely retained. It does mean that a public administrator who has proved faithful and efficient should not be dismissed for political reasons. It may be too much to expect that such an ideal condition will manifest itself at any early date. A short ballot does not guarantee the elimination of politics. It is not unreasonable to believe, however, that there will be an increasing demand for trained men in county administration and that the same sentiment which demands their appointment will prevent their arbitrary removal. It is to be hoped that in a few years county engineering, tax supervising, auditing, and managing will be classed as professions in which young men can look forward to careers. There are 3,200 counties in the United States, varying greatly in size and wealth, so that there is an unlimited field for advancement when once these professions are recognized.

Development of Good-Will:

A successful private business has an intangible asset which it calls "good-will." It represents the difference between the physical value of its establishment and its trade value. In other words it is the monetary value of a good reputation. No strict analogy can be drawn between private business and government, but there must be something in government which corresponds to good-will in business. Is it not "public confidence"? It may not be capitalized in quite the same way as good-will, but it has just as great economic value.

Government generally suffers from a lack of public confidence, and no unit suffers so much as county government. This is probably due in part to the limited authority of county officials, but also in part to their limited ability. When officers are selected on the basis of merit and when the administration of public affairs is characterized by ordinary business efficiency, we may expect an increase in public

confidence. On the other hand, we cannot expect county government to attain that ideal without public sympathy and support. Many of the people who criticize county administration and complain about high taxes will take advantage of the county at every opportunity. Good-will ought to manifest itself in a desire to serve the county rather than to exploit it.

MAKING DEMOCRACY EFFECTIVE

Popular Control:

Democratic government depends upon popular control, and the failures of democracy are due mainly to some obstruction in the exercise of that control. Democratic government may not always be the most efficient form of government. It may at times be extravagant; it may at times be shortsighted. Nevertheless, democracy is the American ideal in government whether it produces good government or bad. There is no doubt that some of our bad government is due to civic inertia and an uninformed public opinion, but quite as often it exists because the popular will is not registered. The multiplied functions of government have made the responsibility of the citizen much greater than in the past. At the same time, the suffrage has been extended. The burden placed upon the electorate is more than the average voter is equal to unless the processes of government are made extremely simple and the opportunities for enlightenment are improved. In order that public opinion may not be superficial, it is necessary that the people be given the facts about their government expressed in simple terms. And in order that they may register their opinion effectively the processes of control must be made more immediate and more direct. Strangely, democratic government in America has not been characterized by simplicity of organization and responsiveness in control. It is reasonable to believe that democracy will yield good government when it selects as its handmaids (*a*) the short ballot, (*b*) the budget, and (*c*) complete publicity. These aids to good government are as much needed in county administration as anywhere else.

The Short Ballot:

A misconception entertained by many people is that the popular election of a multitude of independent officials is essential to democracy. They have been led to believe that it is the only way to make government responsible to the people. This is hardly the case. A long ballot often defeats popular control. Many of our greatest statesmen have agreed that the short ballot is the salvation of democratic government. A few opinions are cited:[11]

I have the fullest sympathy with every reform in governmental and election machinery which shall facilitate the expression of the popular will, such as the short ballot, and the reduction in elective offices.—*William H. Taft*, speech of acceptance, 1912.

In the first place I believe in the short ballot. You cannot get good service from the public servant if you cannot see him, and there is no more effective way of hiding him than by mixing him up with a multitude of others so that there are none of them important enough to catch the eye of the average workaday citizen.—*Theodore Roosevelt*, before Ohio Constitutional Convention.

I believe the short ballot is the key to the whole problem of the restoration of popular government in this country.—*Woodrow Wilson.*

There should be a reduction in the number of elective offices. The ends of democracy will be better attained to the extent that the attention of the voters may be focused upon comparatively few offices, the incumbents of which can be held strictly accountable for administration.—*Charles E. Hughes.*

The short ballot—as if that were not absolutely the gist of all constructive reform. The short ballot—few candidates to be voted for; so few that the voters can really inform themselves about the merits and demerits of the candidates—now there is the only way to get rid of the bosses and the machines.—*Charles W. Eliot.*

Except for the members of the policy-determining boards, county officers perform only clerical or administrative duties and should therefore be selected not on the basis of their political views but for their ability to perform the duties of their respective offices. Under popular election this is not apt to be the basis of selection. Popularity, the ability to get

[11] Haines and Haines, *Principles and Problems of Government*, p. 147.

votes, has been the major consideration in making nominations. It is altogether desirable that those who serve the public should possess the faculty of "getting on" with people. Popularity is not an asset to be despised, but it ought not to be the sole criterion in selecting an official. Party loyalty is the second qualification which is demanded of one who seeks a nomination for a county office. Since party affiliation bears no relation to one's views about county matters, it is a most illogical requirement and tends to rule out the most progressive citizens. County government can never be raised to a high level of efficiency so long as administrative offices are filled by popular election. Nevertheless, no one who has witnessed a political campaign in a North Carolina county believes that the short-ballot principle can be wholly adopted. North Carolina people will not consent to give up a sport so keenly relished as the county elections. Not to be able to elect a sheriff, a register of deeds, a coroner, and a few justices of the peace every two years would take the zest out of life. When there are six candidates for coroner in one county, as was the case in the last election, it can hardly be maintained that there is a lack of interest in local politics.

The county ballot in this state is already comparatively short, and of those elected the sheriff, the clerk of superior court, and the coroner are as much state officers as county officers. Furthermore, they are made elective by the constitution and must so remain until the people see fit to amend the constitution. That leaves only the surveyor, treasurer, and register of deeds to be disposed of. There is no logic in electing a surveyor, and, in actual practice, few counties do. The office should be stricken from the ticket. More than a third of the counties have ceased to elect a county treasurer, and it is likely that better qualified treasurers could be secured in all the counties by appointment. There is no good reason why the register of deeds should not be appointed also, though no great harm can come from the present arrangement.

The short-ballot principle implies more, however, than a reduction in the number of elective offices. It connotes unification of powers. It presumes that there is to be a chief administrator appointed by the commissioners and that

through him their authority is to be exercised. Applied to county government the short-ballot plan is the county-manager plan.

The Budget as an Aid to Popular Control:

The usefulness of the budget as an instrument of financial control has been pointed out in another connection. It is worth while to indicate here how the budget may serve as a means of popular control. It is natural that the taxpayers will show a greater interest in government and will complain less about high taxes if they can trace public expenditures with ease. The budget outlines a program of expenditures and then at the end of the year compares actual expenditures with budget estimates. The items are classified by departments and functions in a way that the average citizen can understand. But even more important is the fact that the citizens can help prepare the budget. After the committee has drafted a tentative budget, it is advertised and then a day set for a hearing. With copies of the previous year's budget in their hands, the citizens may come in and demand an explanation of every increase or decrease. They can disapprove of any item that seems to them unnecessary. Whether their suggestions are accepted or not depends upon their reasonableness and upon the number of people who express themselves. The budget at least offers the people a chance to participate in shaping governmental policy in a very effective way.

Complete Publicity:

Before the people can be expected to vote rationally and display the right attitude toward their government, it is necessary that they be given the facts. The annual reports and financial statements required by law are not very enlightening to the average citizen. In order to make them significant they must be dissected and interpreted. A county accountant who can take these reports and explain them in an elementary way can render a very valuable service to the county. But even more important than an illuminating annual report is a current analysis of county business. Most official transactions are reported faithfully

enough by the newspapers, but oftentimes these acts would be better understood if there could be an official word of explanation. Besides, there is apt to be a certain amount of secrecy about public affairs and a few facts that are concealed. Probably there are times when official business should be kept quiet, but ordinarily publicity of the right sort will do no harm. It is the people's business, and they have a right to know the truth.

Yet the prevailing ignorance of public affairs, and particularly of county affairs, is not due primarily to any deliberate concealment of the facts on the part of the officials. For the most part, county records are open books to those who care to read them. The average citizen does not take the trouble to inform himself. Everything possible should be done to make popular control easy, but it can not be forced upon an unwilling people. The electorate must bear some of the responsibility of government. The individual can do little by himself, but a small group of people, armed with accurate information and animated by right ideals, can exert a tremendous influence. Local tax study clubs in California and Utah are enabling the citizens of those states to become acquainted with their local governments and to locate the sources of waste. In Virginia a civic spirit is being developed by means of community leagues and county councils. Two North Carolina counties—Polk and Rutherford—have county clubs devoted to a study of county government and county affairs. There ought to be civic organizations in every county helping to enlighten the people about their government and helping to make popular control more effective.

Home Rule:

Many who have advocated reform in county government have urged that counties be given "home rule" charters the same as cities, in order that an individual county may reorganize along progressive lines if it so desires. This argument for home rule is not valid in North Carolina. In the first place, improvement in county government is not hampered by the constitution, or at most only slightly. In the second place, any county which has peculiar con-

ditions or problems has always been able to secure special legislation. There is none of that rigid uniformity that the counties in some states have found so stifling. If anything, North Carolina counties have erred in the direction of dissimilarity.

Home rule has generally been advocated, too, for urban or metropolitan counties with problems and functions that can not be regulated by general legislation. North Carolina counties are comparatively uniform. Ninety-four of the counties are distinctly rural, and in none of the others is there a large city. To grant home rule is to recognize the county as a full municipal corporation and give its governing body legislative powers. The time has not yet arrived when this is necessary or desirable.

City-County Consolidation:

There has also been an agitation for, and in a few instances the culmination of, city-county consolidation. This, too, has been a problem of the urban county. North Carolina has no cities which extend over the major part of a county. Durham, Mecklenburg, New Hanover, and Forsyth counties have cities containing over half of the population, and in each of the first three consolidation has been agitated; but the existence in each county of a large area of rural territory complicates the problem of consolidation. The agitation for consolidation is most active in the case of Wilmington and New Hanover County, and here the undertaking has the best chance of success because New Hanover is a very small county. Mecklenburg County secured an enabling act at the last session of the General Assembly to consolidate its government with that of the city of Charlotte, if the voters of the city and county indicate a desire for such consolidation, but there is not much likelihood of the people's endorsing the proposition, and if they do there are likely to be constitutional difficulties. The constitution will not permit discriminations in tax rates, and the rural part of the county cannot justly be taxed for city services.

Rather than attempt a complete consolidation of city and county, it will generally be more practical to limit the consolidation to a joint support of those services which are, or

can be made, county-wide. Public health, public welfare, police protection, judicial administration, and public education might be supported by a single county-wide tax, though even this degree of consolidation might impose a burden on the rural inhabitants. Activities which are a product of city conditions ought to be supported solely by the city. Certainly the rural population should not be expected to help pay for paving, water supply, sewer systems, fire departments, and street lights. So long as the city has some independent services there will have to be an independent government or at least several independent agencies. Only when city and county boundaries become coterminous is consolidation entirely free from serious objections.

IN CONCLUSION

This study may be concluded without making any radical proposals. Certain improvements that were to have been suggested have aleady been realized. It is an encouraging state of affairs when the enactments of the legislature anticipate the recommendations of the investigator. North Carolina's plan of county government, improved by recent legislation, is now perhaps as satisfactory as that of any other state.

The average county is about right in size and population to function smoothly. A few counties lack the population and wealth to maintain the necessary services with a reasonable tax rate. Certain consolidations would be desirable. The townships, with their present boundaries, serve no useful purpose. If their boundaries could be drawn to coincide with those of the consolidated school districts, they might become primary communities of great vitality. The county seat should be a center of culture and service for the entire county.

The small county board is desirable, and states with large boards are eager to effect a change. It would be more desirable still if it could be chosen on other than a partisan basis. With a county manager or a county road supervisor or both to execute the orders of the county board of commissioners, the separate highway boards are hardly necessary

and should probably be discontinued as fast as the larger programs of construction are completed. There is already a tendency in that direction. The separate school board is desirable, but it should be popularly elected and should contain representatives from both parties, and both men and women. The county board of health and the county board of public welfare are advisory bodies serving without pay. They do not handle public funds, and their existence does not weaken the authority of the county commissioners. The methods of choosing the county superintendent of schools, the superintendent of public welfare, and the county health officer, respectively, are quite satisfactory.

The register of deeds and the treasurer are clerical officers and should be appointed by the county commissioners. In case either or both of these officials remain elective, their terms should be increased to four years. The county accountant should be "experienced in modern methods of accounting" as the law prescribes. The duties should not be given to the register of deeds, though the duties of the register of deeds might be given to the accountant or to a clerk appointed by the county commissioners on his recommendation. The office of county surveyor should be abolished.

A county manager should be appointed in each of the larger counties, but in most counties he may perform several functions. In some counties he may be county accountant, in others road supervisor, in others tax supervisor, and no doubt in some counties he can perform all of these duties. The existing auditors, so-called, will in most cases become county accountants or county managers or both.

The sheriff, the clerk of superior court, and the coroner are not strictly a part of the county organization, except where the sheriff is tax collector. The coroner's office might very well be abolished and the duties imposed upon a medical examiner appointed by the court. The clerk of court should also be appointed by the court. The sheriff should be relieved of tax collecting and should become strictly a court officer and a peace officer. Logically he, too, should be appointed by the court, but it would be a mistake to advocate such a thing in North Carolina at present. The

people of the county look upon the sheriff's office as the highest gift which they can bestow upon a fellow citizen, and the office must remain elective to satisfy this tradition. Possibly one or more other officers will have to remain elective as a concession to "democracy." The sheriffs should be assisted in their work as peace officers by a body of state police.

No changes are recommended in the judicial system except that the number of justices be greatly reduced and that where there is a county judge the justices of the peace be under his supervision and tutelage.

District jails and district homes for the indigent should become the vogue. It is a needless burden for every county to have to maintain both of these expensive institutions. No more county homes should be built until those of the modern type already built are well filled. There is a need for more county hospitals, and it is possible that other counties could do as Vance County has done, convert the county home into a hospital.

The new fiscal control plan, which the law requires shall be adopted in all the counties of the state, is a very commendable one and should be rigidly adhered to. It is the most praiseworthy feature of our county government machinery and should not be departed from in a single county. Any weaknesses in the system that appear later can be corrected by general statute.

Sound fiscal control has been emphasized throughout this treatise as of fundamental importance, and again it is declared to be an indispensable element of good government. If there is unity in fiscal control and unity in the official family through fiscal control, efficiency in government is attainable. More efficient administration, combined with a livelier sense of citizenship on the part of all the voters and taxpayers and a clearer vision on the part of county officials, can make the North Carolina county a vital and useful unit of government. Indeed, the county is the channel through which much of the subsequent progress of the state will be wrought, and the degree of efficiency which prevails in county administration will very largely measure the rate of progress.

BIBLIOGRAPHY

Books and Pamphlets

Alameda County (Cal.) Tax Association, Bulletins of.

Bassett, John Spencer, *The Constitutional Beginnings of North Carolina* (*Johns Hopkins University Studies in Historical and Political Science*). Baltimore, 1894.

Bassett, John Spencer, *Regulators of North Carolina*, *Report of the American Historical Association*, 1894.

Beard, Charles A., *American Government and Politics*. Macmillan, New York, 1920.

Bemis, Edward W., *Local Government in the South and Southwest* (*Johns Hopkins University Studies in Historical and Political Science*). Baltimore, 1884.

Blachly, Frederick F., and Miriam E. Oatman, *Government of Oklahoma*. Harlow Publishing Co., Oklahoma City, 1924.

Boyd, Julian P., *The County Court in Colonial North Carolina*. Master's thesis, Duke University, Durham, N. C., 1926.

Branson, E. C., and others, *County Government and County Affairs in North Carolina*, constituting the *North Carolina Club Yearbook*, *1917-1918*. University of North Carolina, Chapel Hill, N. C., 1918.

Branson, E. C., *Syllabus of Home-County Club Studies*. University of North Carolina, Chapel Hill, N. C., 1914.

Brown, Roy M., *Poor Relief in North Carolina*, being Special Bulletin No. 4, issued by The North Carolina State Board of Charities and Public Welfare, Raleigh, N. C., 1925.

Buck, George S., *The Organization of County Government*, *Academy of Political Science Proceedings*, Jan., 1915, vol. 5.

California City and County Government Association, Bulletins of.

Channing, Edward, *Town and County Government in the English Colonies of North America* (*Johns Hopkins University Studies in Historical and Political Science*). Baltimore, 1884.

Chicago Bureau of Public Efficiency, *Administration of the Office of Coroner of Cook County, Illinois*, 1911; *The Office of the Clerk of the Circuit Court, etc.*, 1912; *The Office of County Treasurer*, 1913.

Childs, Richard S., *The County Manager Plan*. National Municipal League Bulletin. New York, 1923.

Childs, Richard S., "Rural Municipalities of To-morrow," *Proceedings of Fifth National Country Life Conference*. New York, 1922.

Citizens' Business, Philadelphia Bureau of Municipal Research.

City and County Government, New York Constitutional Convention Commission. Albany, 1915.

Commission on the Government of Nassau County, New York, Report. December, 1918.

Conference for Better County Government in New York State, *Proceedings of the First Conference*. Schenectady, New York, 1914.

Conference for the Study and Reform of County Government, *Proceedings, First*, 1913, *Second*, 1914, *Third*, 1914. New York.

Connor, R. D. W., *Colonial Revolutionary Period*, being vol. I of *History of North Carolina*. Lewis, Chicago, 1919.

County and Local Government in Illinois, No. 12. Illinois Constitutional Convention, Legislative Reference Bureau, 1920.

County Government in Massachusetts, Bulletin No. 8, 1917-18, Massachusetts Constitutional Convention.

Dodd, Walter F., *State Government*. Century, New York, 1923.

Edwards, Charles W. See University of North Carolina Institute for Research in Social Science.

Evans, Harry C., *The American Poorfarm and its Inmates*. Des Moines, Iowa, Loyal Order of the Moose, 1926.

Fairlie, John A., "County Government," *Cyclopedia of American Government*, I, 492-97. Appleton, New York, 1914.

Fairlie, John A., *Local Government in Counties, Towns and Villages*. Century, New York, 1906.

Fiske, John, *Civil Government in the United States*. Houghton, Boston, 1890.

Gaines, Elizabeth V., *County Government in Virginia*. Virginia League of Women Voters, Richmond, 1919.

Gilbertson, H. S., *The County: The Dark Continent of American Politics*. Short Ballot Association, New York, 1917.

Gilbertson, H. S., *The System of County Government in Kentucky*. Evanston, Illinois, 1924.

Goodnow, Frank J., *Comparative Administrative Law*. Putnam, New York, 1905.

Government of Cincinnati and Hamilton County, The. City Survey Committee, Cincinnati, 1924.

Green, Myron. See University of North Carolina Institute for Research in Social Science.

Guess, William C., *County Government in Colonial North Carolina* (*James Sprunt Historical Publication*). Chapel Hill, N. C., 1911.

Haines, Charles G., and Bertha M., *Principles and Problems of Government* (rev. ed.). Harpers, New York, 1926.

Handbook for Rural Leaders, A, American Library Association, Rural Public Library Service. Chicago, 1927.

Harris, G. Montagu, *Local Government in Many Lands*. P. S. King and Son, London, 1926.

Hawks, Francis L., *History of North Carolina*, vol. II. E. J. Hale, Fayetteville, 1858.

Hodges, Leroy, *Reorganization for Efficiency in Government*. Southern Commercial Congress, June, 1915.

Howard, George E., *Introduction to the Local Constitutional History of the United States* (*Johns Hopkins University Studies in Historical and Political Science*). Baltimore, 1889.

Indiana Tax Laws, 1919, 1921.

Indiana Yearbook, Legislative Bureau, Indianapolis, 1925.

Ingle, Edward, *Local Institutions of Virginia* (*Johns Hopkins University Studies in Historical and Political Science*). Baltimore, 1885.

Iowa, Code of. Des Moines, 1924.

James, Herman G., *County Government in Texas*. University of Texas, Austin, 1917.

James, Herman G., *Local Government in the United States*. Appleton, New York, 1921.

King, Clyde L., "Report of the City County Committee of the American Political Science Association," *Political Science Review*, Feb., 1914. (Reprint.)

Knight, Edgar W., *Public School Education in North Carolina*. Houghton, Boston, 1916.

Los Angeles County Charter.

McBain, Howard L., and Walker, N. W., *How We Are Governed in North Carolina and the Nation*. McBain Publishing Co., New York, 1916.

McIntosh, Atwell C., "The County Government System in North Carolina," being chapter II of *North Carolina Club Yearbook 1917-1918*. University of North Carolina, Chapel Hill, N. C.

Massey, Lucy, *A Study of County-Supported Hospitals in North Carolina*, Department of Rural Social-Economics. University of North Carolina, Chapel Hill, 1927.

Mathewson, A. McC., *County System of Connecticut.* Whaples-Bullis Co., New Haven, 1917.

Maxey, Chester C., *County Administration* (in Delaware). Macmillan, New York, 1919.

Merrill, Maurice H., *County Government in Oklahoma.* University of Oklahoma Bulletin, new series No. 194, 1920.

Milwaukee County Government. City Club of Milwaukee, 1915.

Morrison, Fred W., *The North Carolina Equalizing Fund.* A doctoral dissertation. Teachers' College, Columbia University, 1925.

Munro, William Bennett, *The Government of the United States, National, State and Local* (rev. ed.). Macmillan, New York, 1925.

National Municipal League, Bulletins on County Government.

National Short Ballot Organization, Documents on County Government (37 pamphlets). 338 4th Ave., New York City.

New York State Legislature, *Report of the Special Joint Committee on Taxation and Retrenchment.* Albany, N. Y., 1920-1923.

North Carolina Code (1883).

North Carolina Colonial Records, vols. I, VIII, IX.

North Carolina Consolidated Statutes (1919).

North Carolina Constitution.

North Carolina Educational Commission, *Report of, 1927.*

North Carolina Library Commission, *Ninth Report.* Raleigh, 1926.

North Carolina Manual. State Historical Commission, Raleigh, 1925.

North Carolina Public Laws.

North Carolina Public-Local Laws.

North Carolina Reports of the Supreme Court.

North Carolina Revisal (1908).

North Carolina State Highway Commission, *Reports of.*

North Carolina State Historical Commission, Bulletin No. 12. *Handbook of County Records*, Raleigh, N. C., 1924.

North Carolina State Board of Health, *Health Bulletins*, Nov. 1924, May 1926.

North Carolina State Board of Charities and Public Welfare, *Reports and Bulletins.*

North Carolina State Superintendent of Public Instruction, *Reports of.*

Odum, Howard W., and others, *Attainable Standards in Municipal Problems.* University of North Carolina Extension Bulletin, Chapel Hill, N. C., 1921.

Odum, Howard W., and Willard, D. W., *Systems of Public Welfare*. University of North Carolina Press, Chapel Hill, N. C., 1925.

Olds, A., *Story of the North Carolina Counties*. Raleigh, N. C.

Pennsylvania, Laws of, A compilation of the laws relating to counties and county officers, by S. Edward Hannestad. Legislative Reference Bureau, Harrisburg, 1920.

Porter, Kirk H., *County and Township Government in the United States*. Macmillan, New York, 1922.

Queen, Stuart A., *The Passing of the County Jail*. The Collegiate Press, Menasha, Wis., 1920.

Quick, Herbert, *A New Kind of County Government*. Bulletin of National Municipal League, reprinted from *The Country Gentleman*, 1924.

Quick, Herbert, *The Hawkeye*. Bobbs-Merrill, Indianapolis, 1923.

Raper, C. L., *North Carolina, A Study in English Colonial Government*. Macmillan, New York, 1904.

Sanatorium Sun, April 1, 1927.

School Facts, Files of. N. C. Department of Public Instruction.

Shambaugh, Benjamin F. (editor), *County Government and Administration in Iowa, Applied History Series*, vol. IV. State Historical Society of Iowa, Iowa City, Iowa, 1925.

Sheriff's Office, The. Cleveland Municipal Association, 1912.

Simms, Robert N., *The North Carolina Manual of Law and Forms*. Edwards & Broughton, Raleigh, 1924.

Spencer, D. E., *Local Government in Wisconsin* (*Johns Hopkins University Studies in Historical and Political Science*). Baltimore, 1890.

State and County Government, American Year Book, editions of 1925 and 1926.

Stevens, Edgar A., *County Commissioners and the Powers and Duties of Commissioners' Courts* (in Texas). Van Boechmann-Jones, Austin, 1923.

Steiner, Jesse F., and Brown, Roy M., *The North Carolina Chain Gang*. University of North Carolina Press, Chapel Hill, N. C.

Tax Association of California, numerous bulletins.

Tax Association of Utah, numerous bulletins.

Trussell, Brandon. See University of North Carolina Institute for Research in Social Science.

United States Census, 1920.

United States Department of Agriculture, *Yearbook*, 1925.

United States Department of Agriculture, Farmers' Bulletins, 1481, 1482.

United States Geological Survey, *Bulletin 689*.

University of North Carolina, Department of Rural Social-Economics, files of newspaper clippings, pamphlets, and current material on county government.

University of North Carolina Extension Bulletin, vol. I, no. 7, *Attainable Standards of Municipal Progress*. Chapel Hill, Dec. 1, 1921.

University of North Carolina Extension Leaflet, vol. IV, No. 1, *Constructive Ventures in Government*, Sept., 1920.

University of North Carolina Institute for Research in Social Science. County Government and County Affairs in each of the following counties: Alamance, Beaufort, Carteret, Chowan, Craven, Gates, Macon, Pamlico, Perquimans, Person, Brunswick, Pitt, Stanly, Washington, and Yadkin by Brandon Trussell; Cabarrus, Cumberland, Johnston, Lee, Moore, Montgomery, Robeson, Union, and Wilson by Myron Green; Cherokee, Clay, Haywood, Jackson, Lee, McDowell, and Watauga by Charles W. Edwards; Alamance, Alleghany, Ashe, Burke, Caldwell, Edgecombe, Hyde, Polk, Randolph, Rutherford, and Surry by Paul W. Wager.

University of North Carolina News Letter, Files of.

University of North Carolina Record, No. 168, *The State and County Council*. Chapel Hill, Sept., 1919.

Wager, Paul W. See University of North Carolina Institute for Research in Social Science.

Westchester County (N. Y.) Government Commission, *Proceedings*, Feb. 13, 1923.

Westchester County (N. Y.) Research Bureau, *Bulletins of*, White Plains, N. Y.

White, Albert B., *The Making of the English Constitution*. Putnam, New York, 1908.

White, Walter R., *County Government of Delaware County, Pennsylvania*. Peoples Rights Association, 1917.

Whyte, W. E., *Local Government in Scotland*. Wm. Hodge and Co., Edinburgh, 1925.

Willoughby, William F., *An Introduction to the Study of the Government of Modern States*. Century, New York, 1919.

Wilson, Woodrow, *The State*. Heath, New York, 1908.

National Municipal Review.

Anderson, William, "How England Has Solved Some Familiar County Problems," July, 1918.

Barth, Harry A., "County Government in the Southwest," March, 1925.

Barth, Harry A., "Politics in Southeast County, Pennsylvania," July, 1924.
Bartholemew, H., "Constitutional Convention Considering City-County Consolidation for St. Louis," December, 1922.
Branson, E. C., "County Government in North Carolina," September, 1921.
Brooks, Robert C., "The London Council Election," June, 1925.
Butts, A. B., "The County Board in Mississippi," October, 1924.
Childs, Richard S., "County Affairs," April, 1921.
Childs, Richard S., "Westchester County (N. Y.) Plans a New Government," June, 1925.
Clarke, John J., "Party Politics in English Local Government," January, 1924.
Dodds, H. W., "A County Manager Charter in Maryland," August, 1920.
Dykstra, C. A., "Cleveland's Effort for City-County Consolidation," October, 1919.
Engler, Irvin, "County Manager Charter Defeated in Sacramento," October, 1922.
Fair, Eugene, "The Missouri County Board—Its Personnel and Procedure," November, 1925.
Fleischer, John, "Nassau County (N. Y.) Plans a New Government," July, 1919.
Gettler, A. O., "Why the Coroner System has Broken Down," October, 1924.
Goodrich, R. M., "The County Board in Minnesota," December, 1924.
Goodrich, R. M., "Like the Dead Indian: The County," September, 1922.
Hamilton, M. C., "Improving Our County Government," March, 1924.
Hatten, C. Roy, "The Movement for County Government Reform in Michigan," November, 1920.
Hatton, A. R., "The Butte-Silver Bow County Consolidated Charter," June, 1923.
Hoopes, Charles, "Politicians Win Again in San Diego County," July, 1923.
McIntosh, A. C., "County Government in North Carolina," February, 1925.
Maxey, C. C., "The Delaware Survey," May, 1919.
Moses, Robert, "Home Rule for Two New York Counties," January, 1922, and November, 1922.

Nanny, Wm. H., "The San Francisco Board of Supervisors and Consolidated Government," November, 1924.
Nelson, A. E., "Unprofitable County Government," August, 1924.
Parks, Wade R., "County Government in Montana," March, 1919.
Pidgeon, Mary E., "The Power and Practice of Virginia County Boards," April, 1925.
Pollock, Ivan L., "Investigations of County Administration in Iowa," May, 1924.
Reed, Henry E., "County Government in Oregon—A Growing Problem," February, 1921.
Sikes, George C., "Consolidation Problems in California," March, 1918.
Wager, Paul W., "North Carolina to Have Better County Government." August, 1927.
Wagner, Hugh K., "St. Louis Outgrows Present Boundaries," November, 1924.
Wallace, W. L., "Constables and J. P.'s in Iowa," January, 1924.
Whitnall, G. G., "City and County Consolidation for Los Angeles," January, 1921.
Williams, E. W., "The Defeat of City-County Consolidation in Alameda," July, 1922.

American City.

Childs, Richard S., "Program of County Government Reform," April, 1916. (Town and County Edition.)
Comstock, G. W., "County Road-Building Organization in West Virginia," April, 1920. (Town and County Edition.)
Gilbertson, H. S., "Our Unexplored Counties," April, May, and June, 1920. (Town and County Edition.)
Hamilton, M. C., "Improving Our County Government," March, 1914.
Hay, A. K., "County Road Cost Keeping," June, 1924.
Joachim, L. H., "Dollars Speak in City and County Consolidation," December, 1920, and January, 1921.
Lovett, W. P., "Detroit and Grand Rapids Working for Better County Government," August, 1922.
Peel, A. J., "Some Problems of County Accounting," June, 1924.
Riser, L. A., "Effectiveness of County Health Departments," November, 1920.
Sands, H. R., "Departmental Reporting for Cities and Counties," February-March, 1915.

Sikes, George C., "Advantages of City and County Consolidation," September, 1919.

Wills, P. L., "City-County Consolidation in Montana," February, 1923.

Miscellaneous.

Annals, The, May, 1913, Entire issue of.

Barth, Harry A., "The Trend in County Revenues," *The Annals*, May, 1924.

Bates, F. G., "Village Government in New England," *American Political Science Review*, August, 1912.

Branson, E. C., "County Government Chaos," *The Country Gentleman*, September, 1926.

Cartwright, O. G., "County Budgets and Their Construction," *The Annals*, November, 1915.

Cartwright, O. G., "Efficiency in County Government," *The Annals*, May, 1912.

Childs, Richard S., "Ramshackle County Government," *The Outlook*, May 3, 1916.

Coon, Charles L., "School Support and Our North Carolina Courts," *North Carolina Historical Review*, July, 1926.

Dyer, W. A., "Organizing the County," *Country Life*, March, 1916. "Failure of the County Jails," *The Survey*, January 13, 1917.

Fairlie, John A., "Reorganization in Counties and Townships," *The Annals*, May, 1924.

Frank, Glenn, "Is Our County Government Outworn?" *The Century Magazine*, March, 1921.

Gilbertson, H. S., "Commission Government and Paid Managers for Counties," *The Survey*, January 24, 1914.

Gilbertson, H. S., "Discovery of the County Problem," *Review of Reviews*, November, 1919.

Gilbertson, H. S., "New York County System," *American Political Science Review*, August, 1914.

Gilbertson, H. S., "Running States and Counties on Business Lines," *Review of Reviews*, February, 1917.

Harley, Herbert, "An Efficient County Court System," *The Annals*, September, 1917.

Hinchley, T. L., "Significance and Character of Reform for Counties," *The Survey*, January 24, 1914.

Howell, Edward B., "New Plan of Government for Counties: Montana's Experiment with a Commission-Manager System," *Review of Reviews*, November, 1923.

Ketcham, Dorothy, "Review of Legislation Relative to Reorganization of County Government in 1913-1914," *American Political Science Review*, February, 1915.

Lane, Winthrop D., "Westchester: What an American County Can Do," *The Survey*, November 22, 1919.

Morris, Fred L., article in regard to county consolidation, *Kansas City Star*, May 5, 1926.

O'Brien, Harry R., "A Nation of Tax Spenders," *The Country Gentleman*, September, 1926.

Page, Frank, "North Carolina's Road-Building a Romance of Achievement," *Manufacturers' Record*, May 22, 1924.

Parry, Edward A., "The Future of the County Court," *Fortnightly Review*, August, 1906.

Severance, M. F., "County Units of Minnesota," *Review of Reviews*, July, 1922.

Sparling, S. E., "Responsibility in County Government," *Political Science Quarterly*, September, 1901.

Taylor, Graham, "The County: A Challenge to Humanized Politics and Volunteer Coöperation," *The Survey*, May 30, 1914.

Wyatt, Rushton, "A Program for Rebuilding the County," *The Survey*, September 23, 1916.

Young, T. P., "Scheme of Separation of City and County Government in St. Louis," *American Political Science Review*, February, 1912.

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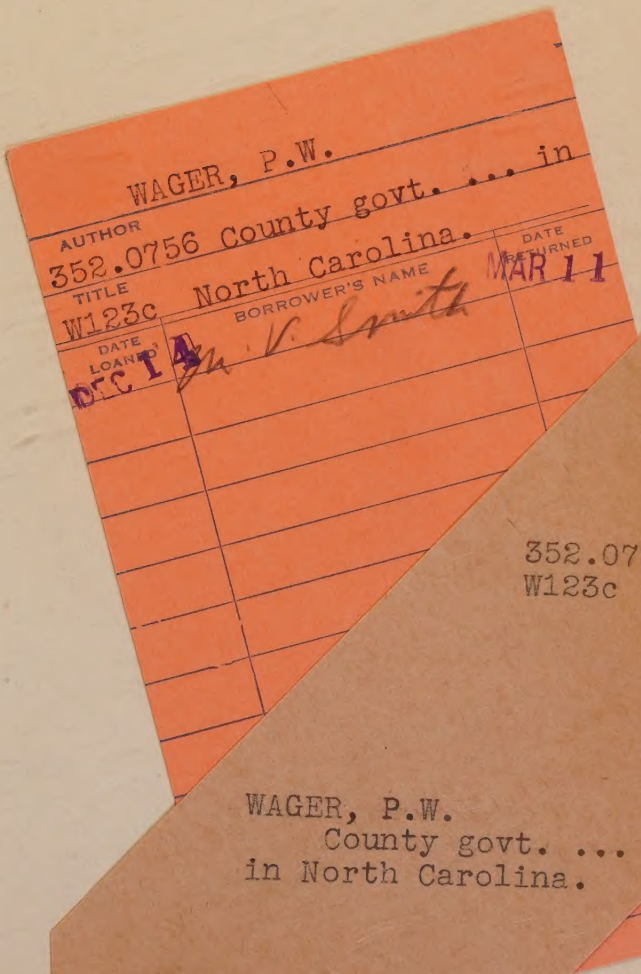
WAGER, P.W.
AUTHOR
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TITLE
W123c North Carolina.
BORROWER'S NAME
DATE RETURNED
MAR 11
DATE LOANED
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WAGER, P.W.
County govt. ...
in North Carolina.